

Tribunal meeting number: 259

Case reference: 161768

Level 2 provider: Unicate Ltd

Type of service: Subscription alert service

Level 1 provider: Veoo Ltd

Network operator: Hutchinson 3G UK Limited and Telefonica UK Limited

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

Background and investigation

The case concerned a subscription alert service operating under the brand name 'Crowd Offers' (the "Service") billing on the shortcode 83003.

The Level 2 provider for the Service was Unicate Ltd (the "Level 2 provider"). The Level 2 provider registered with the Phone-paid Services Authority (the "PSA") on 23 April 2018. The Level 2 provider updated its own registration with the PSA to end on 12 August 2019. The Level 2 provider is currently not registered with the PSA.

The Level 2 provider decided to place the company into creditors' voluntary liquidation. A Liquidator was appointed on 15 August 2019.

The Level 1 provider in respect of the Service was Veoo Ltd (the "Level 1 provider").

The Service was an online offer service, providing consumers with text messages prompting them to visit its website, www.crowdoffers.co.uk, which listed giveaways, competitions and discount codes. The Service charges were stated to be £3 per month for access.

The Service commenced operation on 26 October 2018. On 20 May 2019, the Level 2 provider stated that "the service was only promoted for a relatively short period of time between November 2018 and December 2018", but the service retained a small number of subscribers after that point who continued to be billed.

The Level 2 provider was asked to give an account of how the Service was intended to operate. The Level 2 provider explained that: "*The idea is that all of the best offers are aggregated on our website (www.crowdoffers.co.uk) which saves consumers the time and hassle of having to visit multiple different sites to access the same offers!*"

In addition to this information the Level 2 provider also provided the following consumer service flow:

1) User arrives at registration form on the Crowd Offers website - www.crowdoffers.co.uk

- 2) User inputs MSISDN
- 3) User receives a unique PIN in a text message
- 4) User registers by PIN entry
- 5) PIN entry is verified by the third-party verifier
- 6) User is subscribed to receive Crowd Offers SMS alerts for a monthly fee of £3 until they send STOP to 83003.



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- Weekly email alerts with all the latest offers
- The very best offers all together in one place
- The UK's only site with full customer support
- Free for the first 7 days

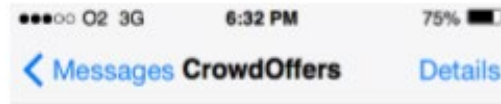


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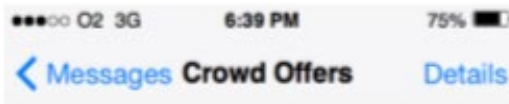
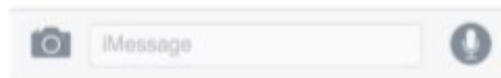
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FreeMSG: U are subscribed to CrowdOffers for £3 per month until you text STOP to 12345. Service by Unicate Ltd. For help: 03333442743 or hello@crowdoffers.co.uk

We have a selection of new exclusive offers that may be of interest to you. Go to www.crowdoffers.co.uk now to log in and view them.



FreeMSG: Reminder u are subscribed to CrowdOffers for £3 per month until you text STOP to 12345. Service by Unicate Ltd. For help: 03333442743 or

Summary of complaints

As of 17 September 2019, the Executive had received 34 complaints from members of the public. A sample of the complainant accounts are provided below:

"I have not personally subscribed to this service and they took £3 out of my phone balance. I am only now realising this and i am furious. Can i please get a refund and cancel this stupid subscription. I dont even know what it is for at the end of the day. [sic]"

“Hi, I have had £3 stolen from my account, I have never seen this service promoted, and I have never subscribed to them or had any contact with them. [sic]”

“I have received a fraudulent charge on my [mobile] account from this number and company, it seems the contact number just disconnects after several rings thus rendering them uncontactable.”

“I have no idea how they got my number, I have not subscribed to any service.”

“I cannot request a refund if I cannot contact them, seems like a scam setup.”

“I am being charged an extra £3 a month on my phone bill since November 2018 for something I’ve not signed up to, have emailed the company twice as advised by my phone company and no response and when I’ve texted stop to the number it says undelivered so there is no way to stop this! [sic]”

Apparent breaches of the Code

The Executive sent a Warning Notice to the Level 2 provider in which the following breaches of the PSA’s Code of Practice, 14th Edition (the “Code”) were raised:

- Rule 2.2.2 – Transparency - Promotion to contain brand name and contact details
- Rule 2.3.2 – Fairness - Misleading
- Rule 2.3.3 – Consent to charge
- Rule 2.6.1 – Complaint handling
- Paragraph 4.2.3 – Failure to provide information

Liquidators acting on behalf of the Level 2 provider wrote to the Executive on 22 November 2019 attaching a response from the former director of the Level 2 provider to the Warning Notice.

On 14 January 2020, the Tribunal reached a decision on the breaches.

Preliminary issues

Service of the Warning Notice and Level 2 provider response

The Tribunal noted that the Liquidators acting for the Level 2 provider had responded to the Warning Notice on 22 November 2019, enclosing a response from a former Director of the Level 2 provider. The Tribunal was satisfied that in the circumstances the necessary documents had been properly served by email and by post.

In response to questioning by the Tribunal, the Executive confirmed that the Level 2 provider had requested an extension of 14 days within which to provide a further response to the Warning Notice within their initial response of 22 November 2019 sent in by the Liquidators.

The Executive confirmed that it had refused the request for an extension and that no further response and/or information had been received from the Level 2 provider since that time.

Admission of further evidence

The Tribunal considered whether it should request further documentation from the Executive consisting of earlier correspondence provided by the Level 2 provider in relation to the promotion of the Service which had not been included in the Tribunal bundle. After considering paragraphs 133-135 of the Supporting Procedures the Tribunal decided that it would be unfair to admit further evidence which had not been included as part of the Tribunal bundle that had been already served on the Level 2 provider. Accordingly, the Tribunal did not consider any additional documentation.

Alleged breach 1

Rule 2.2.2 of the Code

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

1. The Executive stated that the Level 2 provider had breached rule 2.2.2 of the Code because the promotional material supplied by the Level 2 provider in response to requests for information from the Executive did not contain the name or contact details of Uinate Ltd, but instead referred to the name of another company which did not seem to be related.

The Executive noted that the promotional material, which had been approved by the Level 1 provider as part of their onboarding process, differed from the promotional material supplied to the Executive by the Level 2 provider, in that it did contain the name and details of the Level 2 provider.

In response to questioning the Executive confirmed that it had been unable to access the Service to ascertain the full consumer journey, which would have included the promotional material, as the Service had stopped accepting new subscribers after August 2019.

The Executive accepted that there was a discrepancy between the promotional material provided by the Level 2 provider and the Level 1 provider. However, as the Level 2 provider had supplied the same promotional material to the Executive on numerous occasions between 6 November 2018 and 1 August 2019, the Executive submitted that it should be assumed that this was the correct version of the promotional material used.

2. The Level 2 provider denied the breach and submitted that the promotional material which had been supplied to the Executive was in fact a mock-up of the marketing

material. The Level 2 provider asserted that users accessing the service were presented with different promotional material which contained clear brand information and contact details.

3. The Tribunal considered the Code and the evidence before it as well as the representations by the Level 2 provider.

The Tribunal accepted the Executive's assertion that the Level 2 provider had provided the same promotional material to the Executive on numerous occasions and that this version of the promotional material did not contain the brand name or contact details.

However, the Tribunal noted that the promotional material supplied by the Level 2 provider could also have been part of a mock-up, as asserted by the Level 2 provider. As copies of the correspondence between the Executive and the Level 2 provider had not been provided to the Tribunal it was not clear what the Level 2 provider said about this material at the time that it was supplied to the Executive.

The Tribunal further noted that the promotional material provided by the Level 1 provider did contain the name and contact details of the Level 2 provider. The Tribunal's view was that it was not clear what users of the Service would have been presented with at the time that the Service was operational, as the Executive had been unable to monitor the full consumer journey.

In light of the above, the Tribunal could not be satisfied on a balance of probabilities that inadequate brand and contact details had been supplied to consumers. Accordingly, the Tribunal did not uphold a breach of rule 2.2.2 of the Code.

Decision: NOT UPHELD

Alleged breach 2

Rule 2.3.2 of the Code

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

1. The Executive stated that the Level 2 provider had breached rule 2.3.2 of the Code because the promotional material supplied by the Level 2 provider indicated that consumers could sign up to weekly emails alerts, when in fact there was no facility for consumers to enter an email address to receive any emails.

The Executive relied on the Service promotional material supplied by the Level 2 provider between 6 November 2018 and August 2019 which indicated that weekly email alerts would be received by users of the service. The Executive asserted that the screenshots of the Crowd Offers website as provided did not contain an area for users of the Service to enter their email addresses to receive the weekly offers. The screenshots relied upon by the Executive are below:



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 - Weekly email alerts with all the latest offers ✓
 - The very best offers all together in one place ✓
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VERIFY YOUR MOBILE NUMBER

We've just sent you a free message containing a unique 4 digit PIN number. To verify your phone number and complete registration, please enter the PIN into the box below.

Verify

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The Executive also relied on the text message logs that had been provided by both the Level 1 provider and the Level 2 provider. Neither of the text message logs provided referenced any email alerts being sent to users of the Service.

As a result of the above the Executive asserted that consumers had been misled when signing up to the Service as there was nothing to indicate that they would receive email alerts as stated in the promotional material. The Executive therefore submitted that the breach should be upheld on this basis.

2. The Level 2 provider did not submit a response in relation to this breach.
3. The Tribunal carefully considered the Code and all the evidence before it, including the responses that had been provided by the Level 2 provider to the Warning Notice in response to the other alleged breaches.

The Tribunal agreed with the Executive that the screenshots of the promotional material which had been supplied by the Level 2 provider did not appear to show how a user could input their email address to receive weekly email alerts.

However, the Tribunal noted that there was no clear evidence before it which indicated that the promotional material supplied by the Level 2 provider was in fact representative of the actual consumer journey. As it had not been possible for the Executive to monitor the Service after August 2019, the Tribunal considered that there was no evidence before it of the consumer journey. Consequently, the Tribunal was unable to discount the possibility that there may have been a way for consumers to input their email address either at a later stage of the consumer journey or on the website after they signed up to the Service.

The Tribunal also considered the content of the message logs provided by the Level 1 provider and the Level 2 provider. While the Tribunal agreed with the Executive that these did not contain any reference to email alerts, the Tribunal did note that the message logs on occasion referred to SMS message alerts being sent to consumers on a regular basis in relation to offers.

In light of all of the above, the Tribunal could not be satisfied on the balance of probabilities that there was sufficient evidence on which to find that the Level 2 provider had misled consumers by indicating that they would receive weekly email alerts. Accordingly, the Tribunal did not uphold the breach.

Decision: NOT UPHELD

Alleged breach 3

Rule 2.3.3 of the Code

“Consumers must not be charged for PRS without consent. Level 2 providers must be able to provide evidence which establishes that consent”

1. The Executive stated that the Level 2 provider had breached rule 2.3.3 of the Code for the following reasons:
 - the promotional material provided by the Level 2 provider indicated that the service was free for the first seven days, however consumers appeared to have been charged during that period
 - the Level 2 provider had failed to provide evidence which established that consent had been obtained to charge complainants
 - complainants advised that they had not entered a PIN onto the Service website.

Reason one – the promotion indicated that that the service was free for the first seven days, however the message logs received, from both the Level 1 provider and Level 2 provider, suggested that this was not the case.

The Executive relied on the promotional material supplied by the Level 2 provider and Level 1 provider, Service text message logs provided by the Level 2 provider and Level 1 provider, as well as live MSISDN checks, undertaken on a bi-weekly basis, by the Level 1 provider.

The promotional material provided on numerous occasions by the Level 2 provider between 6 November 2018 and 1 August 2019 and the Level 1 provider on 22 May 2019 stated that the Service was “Free for the first 7 days”.



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**Subscribe for just £3 per message alert,
you may receive up to 2 messages a
month depending on the availability of
our offers**

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By clicking on 'SUBSCRIBE NOW' you agree to pay £3 per message alert, you may receive up to 2 SMS alerts per month until you send STOP To 83003. Service is provided to Uunicate Ltd. Charges are added to your mobile phone bill. You can cancel at any time by texting STOP to 83003. Alternatively you can call us on [03333442743](tel:03333442743) or email hello@crowdoffers.co.uk.

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The Level 2 provider message logs however indicated that as soon as consumers received a confirmation message for sign up, the first chargeable message was sent either on the same day or a day later.

The Executive observed that the logs provided by the Level 1 provider also confirmed that consumers were being sent the first chargeable message straight after the opt-in date/time, or a day later. The Executive noted that these later logs demonstrated that this issue affected 100 MSISDNs from the wider subscription base and not just the consumers who had complained about the Service.

The Executive asserted that consumers could not have consented to being charged for the first seven days when the promotional material indicated that the Service would be free of charge for this time period and that a breach of rule 2.3.3 of the Code had therefore occurred.

Reason two – the Level 2 provider has failed to provide evidence that establishes consent has been obtained to charge consumers

The Executive noted that in order to subscribe to the Service, consumers were required to enter their mobile telephone number into the Service website. The consumer would then be issued a PIN by SMS which the consumer would need to input on the Service website in order to sign up and be charged for the Service.

In response to requests for further information, the Level 2 provider supplied service message logs, for each complaint received, between 6 November 2018 and 1 August 2019.

On 13 May 2019 the Level 1 provider was directed to provide evidence of the due diligence, risk assessment and risk control (“DDRAC”) it had performed on the Level 2 provider and the Service. On 22 May 2019 the Level 1 provider responded to the Executive’s direction supplying evidence of the DDRAC checks it stated it had conducted on the Level 2 provider and the Service. Within its response the Level 1 provider supplied text message logs from its systems for ten of the complaint MSISDNs and logs of 100 live MSISDN checks, undertaken on a bi-weekly basis. However no information was provided by either the Level 2 provider or the Level 1 provider on how the information in its respective message logs represented robust evidence of consent to charge.

On 3 June 2019 the Executive directed the Level 2 provider to supply evidence of consent to charge 33 complainants who had contacted the PSA regarding Service charges. Despite acknowledging the Direction and stating that a response would be provided by 24 June 2019, the Level 2 provider failed to supply the required consent to charge information or send in any further response. The Executive therefore submitted that the Level 2 provider had not provided any robust evidence of consent to charge consumers for the Service.

Reason three – complainants advised that they did not enter a PIN onto the Service website

The Executive noted from the Level 2 provider's submissions that in order to subscribe and consent to being charged for the Service, consumers would have to be issued with a PIN after entering their mobile number onto the Service website. Consumers would then have to enter the PIN onto the Service website when prompted to subscribe.

The Executive noted an absence of references to the receipt of PIN messages in the complainant accounts. Noting this, on 14 August 2019 the Executive wrote to 33 complainants asking them for information. In response to the survey the Executive received ten responses. Of the ten responses, all complainants stated that they had not viewed or interacted with Service promotional material. In relation to the receipt of PIN messages and entering the PIN onto the Service website, nine complainants stated that they did not receive a PIN or enter a PIN onto the Service website; one complainant was unsure whether they had received a PIN but stated they definitely had not entered any PIN online.

Given all of the above, the Executive submitted that the Level 2 provider had breached rule 2.3.3 of the Code as evidenced by (i) charging consumers within the first seven days of subscription when its promotional material indicated the service was free for this period (ii) not providing evidence of consent to charge when requested to do so following receipt of complaints and (iii) complainants advising that they had not been sent/entered a PIN.

2. The Level 2 provider denied the breach. The Level 2 provider asserted that every user of the service had consented to being charged and subscribed through a PIN entry registration step which was verified by a third-party verifier.

The Level 2 provider stated that the conclusions of the Executive were based on an "extremely small population of complainants" and that only 33% of the original complainants provided further information to the Executive when asked. The Level 2 provider submitted that as a result of the above the Tribunal could not find a breach of Rule 2.3.3 on the balance of probabilities.

3. The Tribunal considered the Code and the evidence before it as well as the representations of the Level 2 provider.

The Tribunal accepted the Executive's case that consumers could not have consented to be charged for the first seven days of the service as the promotional material supplied by both the Level 2 provider and the Level 1 provider was consistent in stating that consumers would not be charged for the first seven days of the Service, whereas the logs showed that consumers had in fact been charged within this time period.

The Tribunal fully considered the representations of the Level 2 provider in relation to the third-party verification of consent to charge consumers and the number of

complaints received by the Executive, but was not persuaded by these submissions. The Tribunal found the Executive's evidence of complainant accounts to be compelling and accepted that this complainant evidence, when combined with an absence of robust evidence of consent to charge verification, meant that on the balance of probabilities the breach had occurred.

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

Decision: UPHELD

Alleged breach 4

Rule 2.6.1 of the Code

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

1. The Executive stated that the Level 2 provider had breached rule 2.6.1 of the Code based on 12 complainant accounts that had been received. The complainant accounts stated that the contact details provided on the text messages from the Level 2 provider did not appear to support a quick, easy and fair complaints process.

The Executive noted from the message logs supplied by the Level 2 provider that a customer service email address and telephone number had been provided. The Executive also outlined that 12 complainants had experienced difficulties in contacting the Level 2 provider to complain about the receipt of unsolicited Service charges. Samples of the complainant accounts were as follows:

“I have also called their customer service several times but got no response. Please help as I would want a refund to be made for all charges.”

“I cannot request a refund if I cannot contact them, seems like a scam setup.”

“...it seems the contact number just disconnects after several rings thus rendering them uncontactable.”

“I emailed them on their reg email which bounced back as non-existent. [sic]”

“...tried calling the phone number I was given, but the call failed so I have not been able to get through.”

“You gave me an email address to contact of help@crowdoffers.co.uk. Unfortunately this is proving to be undeliverable.”

“...have emailed them, asking very politely for a refund. I did try to call but their phone number was constantly engaged.”

"...have emailed the company twice as advised by my phone company and no response..."

On 31 July 2019 the Executive called the number provided within the message logs – 03333442743. The call was initially connected to an automated operator which connected the call. A call handler then opened the call by asking *"can you please provide the number you are calling from or enquiring about?"* When asked by the Executive with whom the call had connected to, she replied that it was *"the cancellation line for Crowd Offers"*.

The Executive observed that the 12 complaints had been received between 21 November 2018–17 September 2019. According to the Level 2 provider, the service was promoted between November 2018 to December 2018. The Level 1 provider has stated that the service commenced operation on 26 October 2018.

The Executive submitted that while monitoring had shown that it was possible to contact a cancellation line on the balance of probabilities, the Level 2 provider was unable to resolve complaints quickly and easily during the period as shown by the number of consistent consumer complaints. Accordingly, the Executive submitted that a breach of Code 2.6.1 had occurred.

2. The Level 2 provider denied the breach. The Level 2 provider submitted that *"users of the service were provided with both a customer help phone number and also a customer help email address."* The Level 2 provider further submitted that both the phone number and the email were fully functioning and that this had been demonstrated by the Executive's own testing.
3. The Tribunal considered the Code and the evidence before it as well as the representations by the Level 2 provider.

The Tribunal carefully considered the submissions of the Level 2 provider but did not accept that the phone number and email were fully functioning at all times. The Tribunal was of the view that the complainant accounts were persuasive in showing that consumers had experienced difficulty in contacting both the customer helpline and in using the email address that had been provided.

The Tribunal was of the view that on the balance of probabilities the Level 2 provider had failed to ensure that consumers were able have their complaints resolved quickly, easily and fairly. Accordingly, the Tribunal upheld a breach of rule 2.6.1 of the Code.

Decision: UPHELD

Alleged breach 5

Paragraph 4.2.3 of the Code

“Where a direction is made pursuant to paragraph 4.2.1 a party must not fail to disclose to the PSA, when requested, any information that is reasonably likely to have a regulatory benefit in an investigation”

1. The Executive stated that the Level 2 provider has breached paragraph 4.2.3 of the Code for failing to provide Service information when directed to do so.

The Executive noted that on 3 June 2019 the Level 2 provider was issued with a Direction for information. Most of this information had been previously requested from the Level 2 provider on 7 March 2019 during the PSA’s informal inquiry, but had not been received. The deadline for the submission of the information in response to the Direction of 3 June 2019 was 17 June 2019.

The Level 2 provider replied on 20 June 2019 stating: *“You will appreciate that you have requested a lot of information and this is taking time to compile. I aim to have a response with you in full by COB Monday 24th June”*. No further contact from the Level 2 provider was received. The Executive submits that the Direction for information made clear that a failure to provide the information may result in a breach of the Code being brought against the Level 2 provider.

On 3 July 2019, the Executive wrote to the Level 2 provider asserting that the required information had not been received by the specified deadline and that the Executive was now considering raising a breach of the Code for the failure to provide the required information. The Level 2 provider did not respond to this correspondence.

The Executive noted that reasons for failing to provide a response were given within a letter dated 12 August 2019, from the Level 2 provider to its Liquidator. This letter enclosed the Director's Reasons for Failure & Recent Trading Activity document, which stated:

“The Company took the decision to not further promote the service to new users whilst this process with the PSA was taking place. A further communication from the regulator on 10th April 2019 thanked the Company for its cooperation but said they had passed the details on to their investigations team.

Their investigations team requested further information in May 2019 which was supplied and then in June they emailed again requesting yet further information. By this time the volume of activity from Crowd Offer's remaining subscriber base was very small, there were now no further plans to promote the service and so the Company provided no further response to the PSA.”

The Executive submitted that this correspondence made it clear that the Level 2 provider intentionally failed to supply the information requested. In light of this, the Executive further submitted that the Level 2 provider’s failure to provide the information as directed had resulted in a breach of paragraph 4.2.3 of the Code.

2. The Level 2 provider denied the breach. The Level 2 provider submitted that information had been provided to the Executive which included numerous log requests and financial information.
3. The Tribunal accepted the Executive's case that the request for information contained within the formal Direction of 3 June 2019 had not been complied with by the Level 2 provider for the reasons set out in the correspondence between the Level 2 provider and its Liquidator. The Tribunal was of the view that the information requested by the Executive was likely to have a regulatory benefit in assisting the investigation.

The Tribunal therefore concluded that on the balance of probabilities the Level 2 provider had failed to disclose information in breach of paragraph 4.2.3 of the Code.

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 2.3.3

This breach was **Very Serious**.

The Tribunal considered that the nature of the alleged breach meant that it had a highly detrimental impact or potential impact directly on consumers, who may have unknowingly and unwillingly been signed up to and charged for the Service. This conduct was likely to severely damage consumer confidence in premium rate services.

The Tribunal was of the view that the breach had led to consumers incurring a very high or wholly unnecessary cost, where they did not intend to sign up for the Service.

The Tribunal was of the view that the breach had been of a lengthy duration given the time period during which the Executive had received complaints regarding the Service.

The Tribunal considered that the breach had been intentional.

Rule 2.6.1

This breach was **Significant**.

The Tribunal considered that, although there was some evidence to suggest that a telephone number and email had been provided to consumers, the breach still had the potential to cause a drop in consumer confidence in the premium rate market as consumers had been unable to have their complaints resolved in a satisfactory fashion.

The Tribunal was also of the view that the breach was of a significant duration.

The Tribunal considered that the breach had been negligent.

Paragraph 4.2.3

This breach was **Very Serious**.

The Tribunal considered that the information requested from the Level 2 provider was clearly related to the investigation and that the Level 2 provider did not respond to the Executive despite stating that a response would be forthcoming.

The Tribunal was of the view that the breach demonstrated a fundamental disregard for the requirements of the Code.

The Tribunal was of the view that the breach had been intentional.

Sanctions

Initial assessment of sanctions

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

- a formal reprimand
- a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of two years, starting from the date of publication of the Tribunal decision, or until payment of the fine and the administrative charges in full, whichever is the later
- a requirement that the Level 2 provider must refund all consumers who claim a refund for the full amount spent by them on the Service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PSA that such refunds have been made
- a fine of £825,000 comprised as follows:

Rule 2.2.2 - £100,000

Rule 2.3.2 - £175,000

Rule 2.3.3 - £250,000

Rule 2.6.1 - £50,000

Paragraph 4.2.3 - £250,000

The Tribunal adjusted the Executive's initial assessment of sanctions to reflect that breaches of Rule 2.2.2 and 2.3.2 had not been upheld. The Tribunal's initial assessment of sanctions, before any potential uplift or downgrade in light of aggravating or mitigating factors, and based on a preliminary assessment of the breaches as "very serious", was therefore as follows:

- a formal reprimand
- a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of two years, starting from the date of publication of the Tribunal decision, or until payment of the fine and the administrative charges in full, whichever is the later
- a requirement that the Level 2 provider must refund all consumers who claim a refund for the full amount spent by them on the Service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PSA that such refunds have been made
- a fine of £550,000 comprised as follows:

Rule 2.3.3 - £250,000

Rule 2.6.1 - £50,000

Paragraph 4.2.3 - £250,000

Proportionality assessment

Assessment of mitigating and aggravating factors

Mitigation

The Executive submitted that the Level 2 provider had stated that it had provided refunds on two occasions to complainants, although noted that the Level 2 provider had failed to supply any evidence of refunds to corroborate its statement.

The Tribunal considered that the issuing of refunds to consumers would be a mitigating factor but without any evidence of the refunds being given the Tribunal felt unable to take this mitigating factor into account.

Aggravation

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

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

The Tribunal agreed with the aggravating factors advanced by the Executive but clarified that they only considered that the Level 2 provider had failed to follow the guidance on Consent to Charge and Complaint Handling as an aggravating factor.

Financial benefit/Need for deterrence

The Executive argued that the Level 2 provider had generated an estimated £103,108.57 (out of a total Service revenue of £239,895.00) which directly flowed from the breaches. The Executive asserted that this was as a result of the Level 2 provider failing to provide any robust evidence of consent to charge and as the evidence from complainants suggested that they had not opted into 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 Level 2 provider did not make representations in relation to the financial benefit.

The Tribunal was satisfied that the revenue did flow from the breaches for the reasons advanced by the Executive, noting in particular the nature of the evidence from the complainants.

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. However, the Tribunal also considered that, in light of its findings in relation to two of the breaches which had not been upheld, it was appropriate to make a further adjustment to the fine sanction. The Tribunal considered that it was reasonable and proportionate to reduce the fine by a further £80,000 so that the final fine sanction was £170,000. The Tribunal concluded that the seriousness of the case should be regarded overall as **Very Serious**.

Final overall assessment

Sanctions imposed

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

- a formal reprimand
- a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of two years, starting from the date of publication of the Tribunal decision or until payment of the fine and the administrative charges in full, whichever is the later

- a requirement that the Level 2 provider must refund all consumers who claim a refund for the full amount spent by them on the Service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PSA that such refunds have been made
- a fine of £170,000.

Administrative charge: 100%.