

## Tribunal meeting number 280

Case reference: 181007  
Level 2 provider: Himanshu Singh t/a Uplink IT Solutions  
Type of service: IT technical support service  
Network operator: Numbers Plus Limited

This case was brought against the Level 2 provider under Paragraph 4.5 of the 14<sup>th</sup> Edition of the Code of Practice (“the **Code**”).

### Background

The case concerned a £2.50 per minute service that registered as an IT technical support service promoted on 09131240165, 09131240166, 09131240167, 09131240168, 09131240169, 09131240178 and 09131240179 (“the **Service**”).

The Level 2 provider for the service was a sole trader, Himanshu Singh who traded as Uplink IT Solutions (“the **Level 2 provider**”) and was based in India. The network operator was Numbers Plus Limited based in the United Kingdom.

The service was first registered on the Executive’s registration scheme on 4 January 2019 and the Level 2 provider started operating the service on 7 January 2019.

The application form completed by the Level 2 provider for the network operator stated that the service was an IT technical support service. Similarly, the Level 2 provider registered the service with the Executive as an IT technical support line charging £2.50 per minute. The application form submitted by the Level 2 provider to the network operator stated the service was promoted via WhatsApp, Google AdWords, email, and the website <https://sites.google.com/view/uplinksolutions>

The network operator advised “*Numbers were supplied to the Service Provider for a remote computer technical support line – in particular for Windows, iOS and for a remote back up service. The callers would pay for support through the premium call charge.*”

The provider has not previously been the subject of a Track 1 or Track 2 procedure.

The provider did not respond to directions from the Executive for further information on the service.

The network operator suspended the service on 14 January 2020 and fully disconnected it on 21 January 2020 after receiving no response from its client.

## The investigation

The Executive received two complaints (13 May 2019 and 10 October 2019) regarding charges that they had incurred as a result of using the service as set out below:

*“Consumer has been charged by calling Uplink IT Solutions on 09131240167, Consumer was not aware of the charges for the call.” [sic]*

*“Iv bin charged £51 for a call which I was at work till 2:20pm the call was made 28/8/19 @13:17pm no one else has a key for my house.” [sic]*

In addition to the complaints received directly by the Executive, the Executive also noted that there were numerous complaints regarding the Service on the internet such as on websites such as [www.who-called.co.uk](http://www.who-called.co.uk) and [www.scamphone.co.uk](http://www.scamphone.co.uk). These complaints suggested that the service being operated by the Level 2 provider was not an IT technical support line but a service offering bank refunds.

As part of the investigation, the Executive monitored the service on 6 December 2019 by calling the premium rate number 09131240179 and discovered there was no pricing information on the call. The Executive’s monitoring also suggested that the service being provided was a financial service, promoted on <http://bestloansolution.org>, instead of an IT technical support service.

On 29 January 2020, 7 February 2020 and 14 May 2020, the Executive captured screenshots of the website <http://bestloansolution.org> which showed the same 09 premium rate numbers being promoted as those registered as Uplink IT Solutions.

On 29 January 2020 and 20 November 2020 further screenshots were taken of the Uplink IT Solutions website <https://uplinkitsolutions.com/>.

During the course of the investigation, the Executive also became aware that the Financial Conduct Authority (FCA) had issued a warning in respect Best Loan Solution Ltd. The FCA stated on its warning that: “This firm is not authorised or registered by us but has been targeting people in the UK, claiming to be an authorised firm.” The FCA warning also stated that the firm Best Loan Solution Ltd had been using the details of another firm that was properly authorised by the FCA.

The Level 2 provider failed to provide a response to a direction for information issued by the Executive regarding the nature of the service and its promotion. This meant that the Executive was unable to fully establish the true nature of the service during the course of the investigation.

Initially the Level 2 provider did not respond to the warning notice. However, on 20 March 2021 the Executive received the following response from the Level 2 provider:

*“sorry for late reply I was not aware about all this matter we stopped working because of same issue we already informed [the Network operator] about this when we are getting some fake chargeback*

*some business rivals was doing this we don't know anything about this this is the main reason we stopped working since last year" [sic]*

The Executive responded to the Level 2 provider asking it to provide any supporting evidence for its assertions, however no further response was received.

The Executive also contacted the network operator in relation to confirm whether the Level 2 Provider had raised any concerns with it. The network operator confirmed that the Level 2 provider had been in contact on 13 May 2019 with concerns that the name of the business was being misused.

The Level 2 provider told the network operator that it had been contacted by a consumer whose details were not on its database. The Level 2 provider indicated that as a result of this consumer contact, it was concerned that its details were being misused by another company.

Having looked into the correspondence, the Executive was able to ascertain that the consumer in question had been referred to the Level 2 provider by the Executive itself. The Executive also observed that the Level 2 provider had refunded the consumer in question according to its records.

On 31 March 2021 the network operator confirmed the following to the Executive:

*".....I was trying to work out what Mr Singh meant by fake chargebacks and my best interpretation would be that a person or persons in the call centre may have misused the number in order to increase their billing – I can't think of any other party that would charge Uplink IT in relation to the service outside of the call centre. Mr Singh did not elaborate on the matter further and did not give any reason for bringing the service to a sudden close. He obviously had concerns but did not express them to us. Hopefully he can expand on this further in the course of your investigation."*

*It is correct that you passed on the SP details to [the consumer] who then got in touch with Mr Singh to request a refund of the call charges. Mr Singh had no record of him as a customer according to his email and a refund was processed accordingly with immediate effect".*

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

The Executive sent a warning notice to the Level 2 provider on 19 February 2021 in which the following breaches of the Code were raised:

- Rule 2.2.7 Pricing information
- Rule 2.3.2 Misleading
- Rule 2.4.2 Consent to market
- Paragraph 4.2.3 Failure to provide information

On 15 April 2021, the Tribunal reached a decision in respect of the breaches.

### **Preliminary issue – service and proceeding in absence**

The Tribunal considered as a preliminary issue whether the Level 2 provider had been served with the Warning Notice.

The Tribunal noted that the warning notice had been successfully delivered to the email address for the Level 2 provider and all of the documents were downloaded via Thru on 11 March 2021. The Tribunal further noted that the warning notice had been delivered via post to the Level 2 provider’s registered address and delivery was signed by Mr Singh.

The Tribunal also noted that the Executive had attempted to call the Level 2 provider on 11 March 2021, but that its calls were unsuccessful.

The Tribunal further observed that the Executive had notified the Level 2 provider of the Tribunal date and time by email on 30 March 2021. The email explained that the Tribunal would be held remotely via Microsoft Teams and outlined the instructions on how to join.

In addition to the above, the Tribunal observed that the Level 2 provider had responded briefly to the Executive on 20 March 2021 regarding the “fake chargeback” issue. The Tribunal was of the view that this contact demonstrated that the Executive had been using the correct contact details for the Level 2 provider.

In light of all of the information above, the Tribunal was satisfied that the Executive had made all reasonable efforts to try to secure the participation of the Level 2 provider in the proceedings. The Tribunal was of the view that the Executive had also provided clear details to the Level 2 provider on what steps it would need to take to participate in the proceedings remotely. In light of this, the Tribunal was satisfied that the necessary documents had been properly served by post and by email and that the Level 2 provider had been made aware of the proceedings.

The Tribunal was also satisfied that it was fair to proceed in the absence of the Level 2 provider. The Tribunal noted that the Level 2 provider had been in contact, but that it had not otherwise engaged with the Executive. The Tribunal was therefore of the view that adjourning the Tribunal would be unlikely to secure the participation of the Level 2 provider and that it was in the interests of the justice for the case to proceed.

## **Submissions and conclusions**

### **Alleged breach 1**

#### **Rule 2.2.7 of the Code – Pricing information**

“In the course of any promotion of a PRS, written or spoken or in any medium, the cost must be included before any purchase is made and must be prominent, clearly legible, visible and proximate to the premium rate telephone number, shortcode or other means of access to the service.”

1. The Executive stated that the Level 2 provider had breached rule 2.2.7 of the Code as pricing information on promotional material was not provided with the premium rate number.

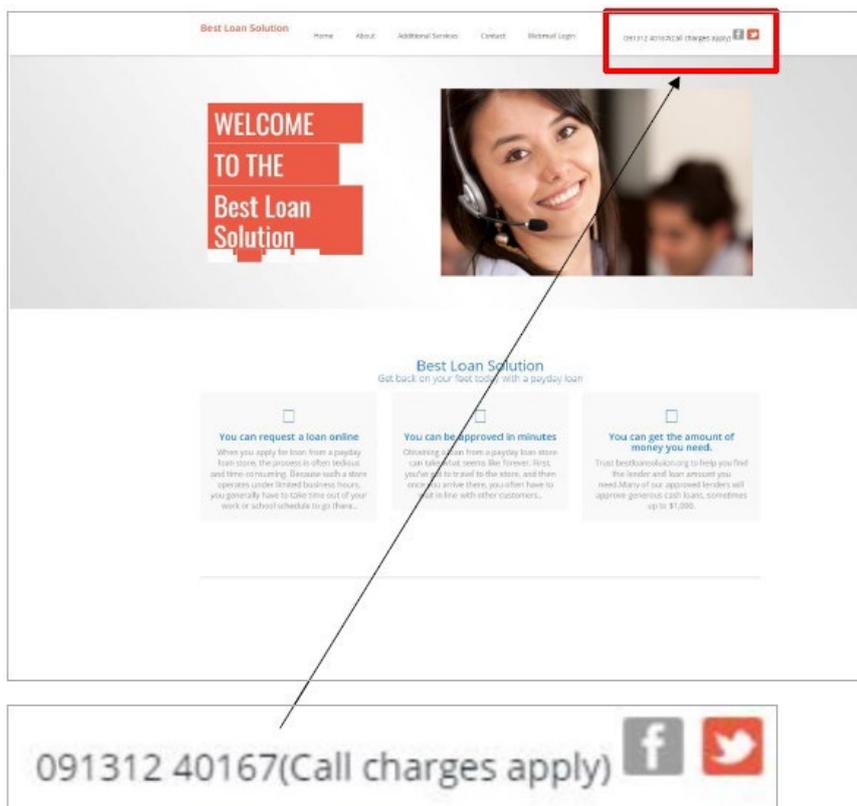
The Executive placed reliance on the PSA guidance on promoting premium rate services (“**the guidance**”) at paragraph 3.1, paragraph 3.7 and 3.8 which outlined that the pricing information should be placed next to, or very near, the means of consumer access to a service. It also states the pricing information should be put where consumers will easily see it and it should not be hard to find.

The Executive also relied on the monitoring evidence which it had gathered which included a call to the service.

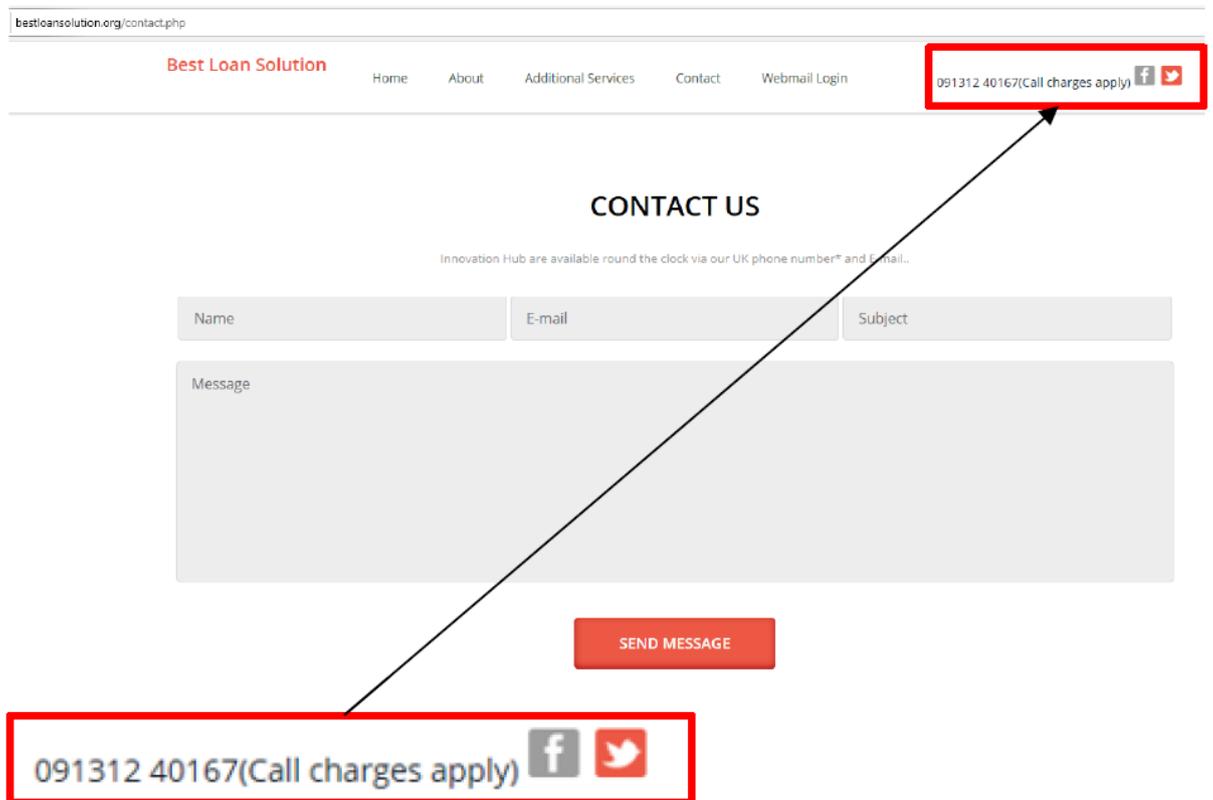
The service and premium rate numbers were promoted on two different websites – on Best Loan Solution (as a financial loan service) and on Uplink IT Solutions (an IT technical support service).

The Executive captured screenshots of the website Best Loan Solution <http://bestloansolution.org> on 29 January 2020, 7 February 2020 and 14 May 2020 which showed 09 premium rate numbers being promoted without any pricing information. As a result of this the Executive submitted that consumers were not fully and clearly informed of how much the premium rate service was likely to cost them before calling the premium rate number. A sample of the Executive’s monitoring is set out below:

Screenshot taken 29 January 2020:



In relation to the Uplink IT Solutions website promoting an IT technical support service, while there was pricing information on the homepage, there was no pricing information for the premium rate number which was displayed on the contact page for <https://uplinkitsolutions.com/>, as set out below:



When the Executive called the 09131240179 number, there was no IVR (Interactive Voice Response) and the advisor did not mention any pricing information.

The Executive also noted that one of the consumer complaints that it had received clearly indicated that the consumer had not been aware of the cost of the call:

*"Consumer has been charged by calling Uplink IT Solutions on 09131240167, Consumer was not aware of the charges for the call." [sic]*

When questioned by the Tribunal, the Executive confirmed that the Provider did not renew his registration with the PSA and was removed from the registration system. As a result of not being able to contact the sole trader, the Executive confirmed that the network operator disconnected the service. The Executive was not aware if the sole trader was still operating an IT service in India.

The Executive also confirmed to the Tribunal that the Level 2 provider had been in contact on 20 March 2021 stating that a rival business had taken over its service. The Executive stated that it had asked the Level 2 provider for further evidence to support this assertion but that it had not received any further contact from the Level 2 provider. The Executive confirmed that the network operator was of the view that if

there had been an issue it was likely to have resulted from an issue from within the Level 2 provider's call centre rather than from any rival business.

2. The Level 2 provider did not provide a response to the breach or make any representations save for those in the email received on 20 March 2021 in which the Level 2 provider stated that its business may have been used by a rival.
3. The Tribunal carefully considered the Code, the guidance and all of the evidence before it, including the email from the Level 2 provider.

The Tribunal was satisfied that the monitoring evidence submitted by the Executive clearly showed that the promotional material for the service on both websites did not contain pricing information that was prominent or proximate to the premium rate phone number. The Tribunal noted that on the Best Loan Solution website there was no pricing at all. Although there was some pricing information on the Uplink IT Solutions website, the Tribunal was of the view that it was not prominent or proximate to the premium rate number.

The Tribunal also noted that the telephone call made by the Executive to the service contained no information about the pricing of the service.

The Tribunal also considered the consumer complaint which stated that the consumer had not been aware of the charge for the call. The Tribunal was of the view that this suggested that the pricing information wasn't provided on the call.

The Tribunal considered the brief representations made by the Level 2 provider in its email of 20 March 2021. The Tribunal was of the view that it had no supporting evidence for the assertion that a rival business was responsible for the issues with the service. The Tribunal also took into account the representations by the network operator which suggested that if there was an issue, it was more likely to have been as a result of a member of the call centre. In addition to this, the Tribunal was of the view that no explanation had been provided as to how a rival business could have altered the website promotions for the service.

The Tribunal therefore decided that the pricing information in respect of the service was not provided in appropriate manner as it was not prominent or proximate to the premium rate number and not clearly visible or legible. The Tribunal accepted the Executive's assertions that as a consequence of this, it was likely that consumers were unaware of the cost of the service before using it.

For all of the reasons set out above the Tribunal decided that on the balance of probabilities a breach of rule 2.2.7 had occurred and accordingly the breach was found proved.

Decision: UPHELD

## Alleged breach 2

### Rule 2.3.2 of the Code- Misleading

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

1. The Executive asserted that a breach of paragraph 2.3.2 had occurred as the service and its promotional material was misleading.

The Executive relied on the guidance on Promoting premium rate services which stipulated that in order for consumers to trust and be confident in using PRS “it is important that they have available all the key information about a service as part of their consideration of whether to make a purchase or not”.

The Executive asserted that it was not clear what the service was, and for this reason the service was misleading. The Executive observed that the Level 2 provider registered the service with the Executive as an IT technical support service.

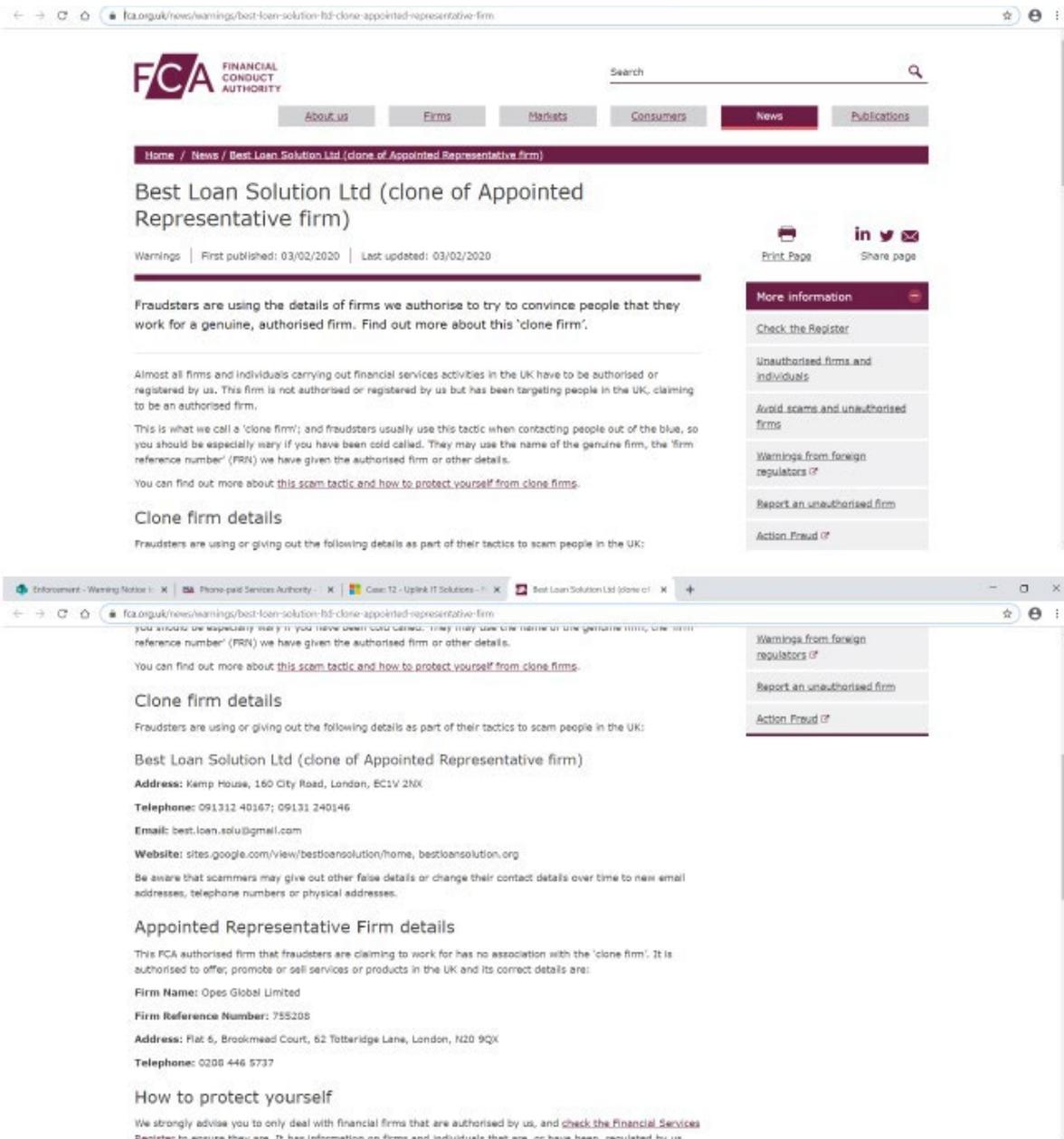
The network operator also supplied the application form which showed the Level 2 provider was operating an IT support service. The documentation showed that the network operator had supplied premium rate numbers to the Level 2 provider for a remote computer technical support line focused on Windows, iOS and for a remote back-up service. It was assumed that consumers would be paying for IT support through the premium call charge.

The Executive submitted that despite the registration details and the information provided to the network operator, the evidence suggested that the Level 2 provider was also operating a financial service using the same premium rate numbers.

Call monitoring indicated that the service was processing the loan applications and its website <http://bestloansolution.org/index.php> promoted the service using the premium rate numbers as the contact number.

The Executive also noted that the FCA warning indicated that the provider was imitating an FCA registered company and that it was not authorised to provide loans.

The FCA warning also stated that “Best Loan Solution Ltd” was a “clone firm”. The warning explained that “Best Loan Solution Ltd” had used the details of an FCA- authorised firm and that it was using premium rate numbers allocated to the Level 2 provider to cold call consumers and to entice them to call back on the 09 premium rate numbers in order to receive a refund or loan.



The Executive also relied on the open-source online complaints, which suggested the service was misleading by offering bank refunds and a loan via email, which support the FCA warning and Executive’s monitoring of the service.

One online complainant stated the caller knew their name, date of birth and that they banked with Halifax in what appeared to be an attempt to convince the person being called that the service was a legitimate bank charge refund service: *“A pakistan or indian rang me today to tell me halifax owe me some money as they had over charged me on my bank charges i told him i have no bank charges he then told me my name my date of birth my address and that i banked at halifax ...so i went along with it...”*

A sample of the online complaints is provided below:

<https://who-called.co.uk/Number/09131240169>

02/08/2019

09131240169 called on another number offering £2000 to pay into bank account. asked my parents were asked to call back on this number

<https://who-called.co.uk/Number/09131240167>

28/01/2020

they called my mum and she ended up with a phone bill for £81

<http://www.scamphone.co.uk/number/09131240178>

scam. do not answer/ring them if they email you.

[www.scamphone.co.uk/number/09131240169](http://www.scamphone.co.uk/number/09131240169)

Asked to phone back on this no. to receive check for 2000 has anyone actually received a check

Based on the complaints evidence, the Executive asserted that the consumers were contacted saying that they were owed refunds. This misled consumers into calling the premium rate number at a high cost to try to get money back that they were allegedly owed from bank charges. However, the firm was not authorised by the FCA and was a “clone firm”.

The Executive also relied on the promotional material, monitoring of the service, network operator evidence, and provider registration details.

The provider stated in its registration of the service with the Executive and in its application form to the network operator that the service was an IT technical support service. However, the Executive observed that the Level 2 provider’s premium rate numbers were promoted on the website <http://bestloansolution.org> under the company name Best Loan Solution Ltd. The FCA had stated on its website that “this firm is not authorised or registered by us but has been targeting people in the UK, claiming to be an authorised firm” and had been using the details of another firm that was authorised by the FCA.

The Executive was of the view that consumers who had been called or emailed by the provider had been misled or were likely to have been misled into believing this was a genuine financial service offering bank refunds or a loan.

The screenshots taken by the Executive of the promotion showed that the service had the potential of misleading consumers into thinking that this was a legitimate way of obtaining a loan and was designed to look like a legitimate loan service with supporting “achievements” and “testimonials” from satisfied customers.

WELCOME  
TO THE  
Best Loan  
Solution



### Best Loan Solution

Get back on your feet today with a payday loan



#### You can request a loan online

When you apply for loan from a payday loan store, the process is often tedious and time-consuming. Because such a store operates under limited business hours, you generally have to take time out of your work or school schedule to go there...



#### You can be approved in minutes

Obtaining a loan from a payday loan store can take what seems like forever. First, you've got to travel to the store, and then once you arrive there, you often have to wait in line with other customers...



#### You can get the amount of money you need.

Trust [bestloansolution.org](http://bestloansolution.org) to help you find the lender and loan amount you need. Many of our approved lenders will approve generous cash loans, sometimes up to \$1,000.

## TESTIMONIALS



VERY PLEASED WITH THE COOL SERVICES PROVIDED.

Anthony Crouch

*“ I would recommend Best Loan Solution! They were quick, professional and honest. I really appreciated the integrity and communication from the team.*



VERY PLEASED WITH THE COOL SERVICES PROVIDED.

Linda Scott

*“ best Loan solutions helped me finance and purchase my first home! I am so grateful for Alan and the team at best Loan solutions. The greatest thing about Best Loan Solution .*

In addition, the promotion suggested the service was both a loan company and a technical support as set out below:

# Who are we?

People across the country are struggling financially these days, with the result being that they often find themselves in need of some fast monetary assistance. And with brick-and-mortar cash payday loan stores cropping up left and right, there certainly are many quick-cash options out there. However, the cons of dealing with storefront payday lenders far outweigh the pros, and this makes obtaining financial help via a service such as [bestloansolution.org](http://bestloansolution.org) a vastly preferable option.

Here are a few of the reasons why we firmly believe that going through us to get funds can be exactly the right answer for consumers who are currently burdened with money problems:

We re dedicated tech support specialists and advisers .We arean independent provider of tech support for computer software, hardware and peripherals and not affiliated to any third party brand unless specified. We offer a range of service plans to suit your needs, to assist we are on the phone..

When the Executive called the service, there was no IVR, and the adviser did not mention cost or company name but asked the Executive if it wanted to proceed with the loan application. The Executive confirmed it thought this was a technical support line and that it probably had the wrong number and ended the call.

The Executive observed that it was clear from this monitoring call that the service did not offer any IT technical support. Monitoring conducted by the Executive supported the FCA warning and open-source online complaints that the Level 2 provider had instead been operating an unauthorised financial service.

The Executive submitted that on the website <http://bestloansolution.org>, under "Privacy Policy" it stated that "best loan solution was a trading style of best loan solution Ltd, company number 10216084". The Executive found on Companies House that there was no company under the name "Best Loan Solution Ltd", and the company number 10216084 belonged to and unrelated company.

The Executive was of the view that the promotion by the Level 2 provider was designed to appear as a legitimate financial loan company that was registered with Companies House as it used another legitimate company's registration number and address details. However, no such company as "Best Loan Solution Ltd" existed, and the provider of the service was in fact a sole trader trading as Uplink IT Solutions. As a result of this, the Executive submitted that the service was unfair because it misled consumers into believing that the service was provided by a legitimate, authorised loans company.

The Executive was unable to fully ascertain what type of service was being provided by the Level 2 provider. The complainant accounts suggested that consumers who used the service believed that they were contacting a legitimate and FCA-authorised loan service and/or a service that offered bank refunds. The monitoring evidence obtained by the Executive by way of the phone call also suggested that the service was a financial service.

The Executive was unable to find any reasonable explanation as to why there was a discrepancy between the true nature of the service and the documents supplied to the network operator and the Executive's registration data, both of which had stated that the Level 2 provider was operating an IT technical support service.

The Level 2 provider did not respond to the direction and informal enquiry questions from the Executive regarding the nature of the service.

In conclusion, the Executive submitted that the service was misleading or likely to mislead consumers as there was conflicting information on the promotional material as to what the service was. Furthermore, the Executive was of the view that consumers had been misled or were likely to have been misled into believing that they were contacting an authorised and legitimate financial service when this was not in fact the case (as demonstrated by the FCA warning).

2. The Level 2 provider did not provide a response to the breach.

The Level 2 provider did however respond to the warning notice on 20 March 2021 indicating that it had not been aware of the issues but that they had arisen as a result of a business rival's activities.

3. The Tribunal carefully considered the Code, the PSA guidance and all of the evidence before it, including the email from the Level 2 provider of 20 March 2021.

The Tribunal noted that the Level 2 provider operated a different service to the one that was registered as an IT support service on the PSA registration system. Additionally, the service had pretended to be an FCA-regulated service on its promotional material and its methods of engaging with customers was different to those stated in the initial registration.

The Tribunal also accepted the Executive's assertion that consumers who were called or were emailed by the Level 2 provider had been misled or were likely to have been misled into believing that the Level 2 provider's service was a legitimate, authorised financial service offering bank refunds or loans. The Tribunal further noted that consumers would not have been able to find any information about the true nature of the Level 2 provider as its promotional material contained information which related to another legitimate but wholly unrelated company.

The Tribunal was of the view that it had no evidence to support the assertion by the Level 2 provider that the misleading nature of the service was as a result of a business rival's activity. In addition to this, the Tribunal noted that the network operator was of the view that if there was an issue it was likely to have been as a result of the call centre used by the Level 2 provider rather than a rival.

Although it was not clear as to why the Level 2 provider's registration details and the details given by the Level 2 provider to the network operator differed to the service that it actually operated, the Tribunal was satisfied that there was cogent evidence presented by the Executive that the service had misled consumers and/or was likely to have misled consumers.

Applying the civil standard of proof, the Tribunal therefore found that it was more likely than not that the affected consumers had been misled. The Tribunal decided that on the balance of probabilities a breach of rule 2.3.2 had occurred and accordingly the breach was found proved.

Decision: UPHELD

### Alleged breach 3

#### Rule 2.4.2 of the Code - Consent to market

“Consumers must not be contacted without their consent and whenever a consumer is contacted the consumer must be provided with an opportunity to withdraw consent. If consent is withdrawn the consumer must not be contacted thereafter. Where contact with consumers is made as a result of information collected from a PRS, the Level 2 provider of that service must be able to provide evidence which establishes that consent”.

1. The Executive submitted that the provider had acted in breach of rule 2.4.2 as it did not have consent to market its services to consumers.

The Executive relied on the online complainants' evidence which showed that consumers were contacted via email and/or phone and offered a loan or bank refund. Consumers did not know how they came to be contacted by the Level 2 provider. A sample of the online complaints is provided below:

<https://who-called.co.uk/Number/09131240169>

02/08/2019

09131240169 called on another number offering £2000 to pay into bank account. asked my parents were asked to call back on this number

<https://who-called.co.uk/Number/09131240167>

28/01/2020

they called my mum and she ended up with a phone bill for £81

<http://www.scamphone.co.uk/number/09131240178>

scam. do not answer/ring them if they email you.

[www.scamphone.co.uk/number/09131240169](http://www.scamphone.co.uk/number/09131240169)

Asked to phone back on this no. to receive check for 2000 has anyone actually received a check

[www.scamphone.co.uk/number/09131240168](http://www.scamphone.co.uk/number/09131240168)

Report by anonymous, 28 day ago, Unsicher

This is a scam as these people take money from your landline when calling them back they charged me £64. DO NOT CALL BACK!

Report by anonymous, 3 day ago, Neutral

Does anybody know what this number is please

[www.scamphone.co.uk/number/09131240166](http://www.scamphone.co.uk/number/09131240166)

Report by anonymous, 24 day ago, Unsicher

Was sent email from this number telling me that I had money owed me from a bank and to call this number even though it didn't what my name is

Report by anonymous, 1 day ago, Unsicher

A pakistan or indian rang me today to tell me halifax owe me some money as they had over charged me on my bank charges i told him i have no bank charges he then told me my name my date of birth my address and that i banked at halifax ..so i went along with it ...he then said how would i like the money by bank transfer or cheque so i said cheque he gave me a claim number and a phone number to ring to give my claim number to and then asked me when was i going to ring the number so i said tomorrow and he,said thats okay and,wished me,a happy day ...the number he gave is the number above of which i wont be ringing and the number he rang me on is 0181868566 so beware

[www.scamphone.co.uk/number/09131240165](http://www.scamphone.co.uk/number/09131240165)

Report by anonymous, 12 day ago, Unsicher

Received an email with the phone number saying I had successfully applied for a £300 loan! Didn't click on link or phone the number.

Report by anonymous, 21 day ago, Unsicher

I was called from an Indian call centre on 04748702846 saying I was due a banking claim refund, they couldn't say who they were from. Asked me to call 09131240165 to arrange the payment.

The Executive also relied on the copy of the application form completed by the Level 2 provider for the network operator and the network's operator response to the Executive. This information stated that the service was promoted by "WhatsApp", "Google AdWords" and "Email", however the network operator advised the Executive the service was promoted by "Outbound telemarketing call / referrals".

Additionally, the Executive placed reliance on PSA guidance on privacy and consent to market at paragraph 3. This guidance sets out in some detail the information that providers would be expected to retain and produce to show that consent to market had been obtained from consumers. The Level 2 provider failed to provide any evidence to the Executive to demonstrate that it had obtained any consent to market to consumers.

The Executive submitted that there was no evidence that was capable of undermining the complainants' accounts that they had received unsolicited emails and/or telephone calls from the service.

In conclusion, the Executive submitted that on the balance of probabilities, consumers had been marketed to without their consent.

2. The Level 2 provider did not respond to the breach.

As set out above the only response received from the Level 2 provider indicated that any issues with the service were as a result of the activities of business rivals.

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

The Tribunal observed that the complainant accounts were very similar in their nature and that they all suggested that the initial calls made to them had been unsolicited. The Tribunal was of the view that the complainant accounts on the various websites which the Executive had referred to indicated that some consumers were unaware of the number that had called them, which in turn suggested that they had not provided their consent to be contacted.

In addition to the above, the Tribunal also noted that the Level 2 provider had been directed to provide information in relation to either the soft or hard opt-in methods that it had used in order to market to consumers. The Level 2 provider had not responded to the direction for information. The Tribunal was of the view that as a result of the above there was no information before it to suggest that the Level 2 provider had obtained any consent to market through the hard or soft opt-in methods.

In light of the above, the Tribunal were persuaded on the balance of probabilities that the breach of paragraph 2.4.2. had occurred.

Decision: UPHELD

#### **Alleged breach 4**

##### **Paragraph 4.2.3 of the Code - Failure to provide information**

“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 submitted that the Level 2 provider had acted in breach of the Code as it failed to provide service information when directed to do so. The information requested would have had a regulatory benefit to the investigation.

The Executive relied on the direction issued to the provider dated 4 June 2020 and a reminder email with a deadline to respond by 15 June 2020.

The Executive considered the required information to be of regulatory benefit as it would have assisted the Executive in determining whether the Level 2 provider was operating an IT technical support service or a financial service. Although the Level 2 provider received both the formal direction and the reminder email, it failed to comply

with the direction to provide information requested by the Executive without any further explanation.

2. The Level 2 provider did not make representations or provide a response to the breach.
3. The Tribunal carefully examined all of the evidence before it.

The Tribunal agreed with the Executive's submission that the Level 2 provider consistently failed to respond to the Executive's legitimate requests. The Tribunal noted that the response that was made on 20 March 2021 did not advanced any argument in relation to this breach or seek to explain why the Level 2 provider had not engaged prior to that time given that the Executive had used the correct contact details.

The Tribunal was of the opinion that the information requested by the Executive was vital to understanding the nature of the service. In particular, the Tribunal noted that the Executive had requested information about the nature of the service and how consent to market had been sought and gained from consumers.

In light of the above, the Tribunal concluded that the information which had been requested by the Executive had a clear regulatory benefit to the investigation and that the failure of the Level 2 provider to provide this information had the potential to impact detrimentally on the ability of the Executive to investigate the service.

In light of the above, the Tribunal was satisfied on the balance of probabilities that a breach of paragraph 4.2.3 of the Code had occurred.

Decision: UPHELD

## 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**:

- formal reprimand
- a prohibition on the provider from providing, or having any involvement in, any premium rate service for a period of seven years, starting from the date of publication of the Tribunal decision, or until payment of the fine and the administrative charges, whichever is the later
- a requirement that the Level 2 provider must provide a full refund to 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 the PSA that such refunds have been made

- a fine of of £1,000,000.00 comprised of:
  - Rule 2.2.7 - £250,000
  - Rule 2.3.2 - £250,000
  - Rule 2.4.2 - £250,000
  - Paragraph 4.2.3 - £250,000.

The Level 2 provider did not make any representations in relation to the fine proposed at the initial assessment stage.

The Tribunal considered the initial assessment of sanctions carefully and agreed with the Executive's recommendations.

### **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 2.2.7 – Pricing information**

This breach was **very 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 at all or was very unclear. As such the Tribunal considered that consumers used the service without understanding its true cost or nature.

The Tribunal was satisfied that the breach demonstrated a fundamental disregard for the requirements of the Code as on some of the promotional material there was no pricing information at all.

#### **Rule 2.3.2 – Misleading**

This breach was **very serious**.

The Tribunal considered that the alleged breach was likely to severely damaged consumer confidence in premium rate services as consumers had incurred unnecessary costs.

The Tribunal accepted that the breach was committed intentionally. The Tribunal was also 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 an FCA-regulated service.

#### **Rule 2.4.2 – Consent to market**

This breach was **very serious**.

The Tribunal considered the breach had a clear and highly detrimental impact directly on consumers as there had been no evidence in this case to suggest that consent to market had

been obtained from consumers at all. The Tribunal considered the invasion of consumers' privacy to be particularly serious. The Tribunal also considered that for the same reasons, the breach was likely to severely damage consumer confidence in premium rate services.

The Tribunal was also satisfied that the breach demonstrated a fundamental disregard for the requirements of the Code in relation to respecting consumers' privacy and that it had been committed intentionally.

#### **Paragraph 4.2.3 – failure to provide information**

This breach was **very serious**.

The Tribunal was of the view that the breach demonstrated a fundamental disregard for the requirements of the Code as the Level 2 provider did not give any explanation for failing to provide the information that had been requested by the Executive under paragraph 4.2.1 of the Code.

The Tribunal considered the information requested from the provider was clear and relevant to the investigation.

The Tribunal was satisfied that this breach had been committed intentionally in the absence of any explanation from the Level 2 provider as to why it could not provide the information that had been requested.

#### **Proportionality assessment**

Assessment of aggravating and mitigating factors

##### **Aggravation**

The Executive submitted that there were a number of aggravating factors which went to the investigation as a whole.

The Executive asserted that the Level 2 provider had failed to follow guidance on promoting premium rate services, which had it been followed it could have prevented the breaches from occurring. In addition to this, prior to the above breaches occurring numerous published adjudications made clear the importance of pricing prominence and that services must not be misleading.

The Executive submitted that it was an aggravating factor that the Level 2 provider failed to respond to formal direction under paragraph 4.2.1 of the PSA Code to assist with its investigation and understanding of the service and the value chain that was sent on 4 June 2020, and a reminder that was sent on 15 June 2020.

The Executive also noticed that the FCA had previously issued an alert stating the service was a “clone” service and not FCA authorised as it claimed to be.

The Level 2 provider did not make representations.

The Tribunal did not not accept the Executive’s submission that the failure to follow published guidance was an additional aggravating factor to the case, deciding instead that this factor was inherent to the breaches themselves. The Tribunal considered that the failure to respond to the Executive’s formal direction was an inherent part of the breach of paragraph 4.2.3 and did not therefore amount to an additional aggravating factor.

The Tribunal was of the view that there were no additional aggravating factors going to the case as a whole, as it considered that the factors put forward by the Executive were part of the breaches and/or had already been taken into account in relation to the assessment of breach severity.

## **Mitigation**

The Executive submitted that there were no mitigating factors.

The Executive noted that in response to the warning notice, the Level 2 provider had suggested someone else may be using their details but that it failed to provide any further evidence. The Executive further noted that in response to a request for information, the Level 2 provider had stated that it would refund the complainant but only after the Executive contacted them.

The Executive also observed that the network operator suspended the service on 14 January 2020 and disconnected fully on 21 January 2020.

The Level 2 provider did not make representations.

The Tribunal agreed with the Executive that there were no mitigating factors in this case. The Tribunal noted that the service was suspended and later disconnected by the network operator and that it was not the Level 2 provider who had ended the service (as indicated in its email of 20 March 2021).

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

The Executive stated that the Level 2 provider had generated £12,753.44 in revenue.

The Executive submitted that the revenue flowed directly from the breaches in the case (save for the breach of paragraph 4.2.3). The Executive argued that the breaches had occurred throughout the operation of the service. In addition to this, the Executive submitted that the nature of the breaches (misleading and no/inadequate information regarding the pricing) meant that consumers had not been provided with sufficient information to make an informed decision in relation to using the service at all.

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

The Level 2 provider did not make any representations in respect of its financial position.

The Tribunal considered the revenue figure that it should use for the purposes of sanctioning. The Tribunal was therefore of the view that in the absence of any other evidence it considered the figure of £12,753.44 to be the revenue figure.

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 the breaches and in order to send out a clear message to the wider industry that services which mislead consumers are not acceptable.

### **Sanctions adjustment**

The Executive submitted that the prohibition and refunds sanctions were proportionate as while they were likely to have a detrimental impact on the Level 2 provider, they were the minimum measures necessary to ensure that the sanctioning objective of credible deterrence was met.

The Executive however stated that the initial fine recommendation of £1,000,000 far exceeded the revenue that the Level 2 provider derived from the breaches, and that the recommended fine, in combination with the recommended non-financial sanctions, was 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 decided that despite the likely impact on the Level 2 provider, it was necessary to impose a financial penalty on the Level 2 provider in order to ensure that the sanction imposed had a deterrent effect given the severity of the breaches.

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 appropriate and 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.

### **Sanctions imposed**

- formal reprimand

- a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of seven years, starting from the date of publication of the Tribunal decision, or until payment of the fine and the administrative charge, 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%