

Tribunal meeting number: 258  
Case reference: 158026  
Type of service: Information, Connection and Signposting Services  
Level 1 provider: N/A  
Level 2 provider: ECN Digital Ltd  
Network operator: Core Telecom Ltd, West Yorkshire, UK

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

## Background

The case concerned a 'Call Connection' service operating on the numbers across the number ranges 0870 1860 XXX, 0870 1862 XXX, 0870 1863 XXX, 0870 1864 XXX, 0870 1866 XXX, 0870 1868 XXX, 0870 1869 XXX and 0870 4942 XXX (the "Service").

The Level 2 provider for the Service is ECN Digital Ltd (the "Level 2 provider"). The Level 2 provider has been registered with the Phone-paid Services Authority (PSA) since 17 September 2018.

The Network operator for the Service is Core Telecom Ltd (the "Network operator").

## The Service

The Service was a 'call connection' service that offered connection to organisations sought by consumers. The Service cost 13p per minute plus any call connection charge. The Service operated across various web domain addresses.

The Level 2 provider stated the Service commenced on 28 May 2018 and that the purpose of the Service was "to help customers quickly connect to Vodafone without having to search for numbers" and that consumers "...search for the number on Bing, call the number and then it connects them through with a message first explaining how the service works and charges." The Level 2 provider said that they were wrongly advised that 0870 numbers "were not covered under PSA" and explained that "...we have stopped all advertising so nobody can see the numbers and we are working to change out advertising to fully comply with your guidelines. Unfortunately we were unaware these numbers were covered under guidelines and needed to be registered..."

The Network operator informed the PSA that the Service commenced operation on 7 September 2015 and that the Level 2 provider was allocated a total number of 508 premium rate numbers between September 2015 and February 2018.

The Network operator advised in an email to the PSA on 27 September 2019 that it had terminated all the Level 2 provider's Service numbers and stated that this "demonstrates our unequivocal zero tolerance policy to any kind of consumer harm".

The Executive conducted its own monitoring of the Service on both desktop and mobile devices.

The Service was originally monitored on 23 August 2018.

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
- Rule 2.2.7 – Pricing
- Paragraph 3.11.3 – Special conditions ICSS 5
- Paragraph 3.11.3 – Special conditions ICSS 11
- Paragraph 3.11.3 – Special conditions ICSS 13

On 17 December 2019, the Tribunal reached a decision in respect of the breaches.

### **Preliminary issue – Service**

The Tribunal considered as a preliminary issue whether the Level 2 provider had been served with the Warning Notice. The Tribunal was satisfied that the documents had been properly served and noted that the Level 2 provider had acknowledged receipt of the correspondence by email dated 14 November 2019.

## **Submissions and conclusions**

### **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 Level 2 provider had omitted to include the contact details of the Level 2 provider and key information such as the name (or brand, if part of the name) from its promotions. The Executive referred to the PSA Guidance on Promoting premium rate services and specifically referenced paragraph 2.3, which states:

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

*Cost*

*Brand information*

*Product or service information*

*How it is delivered or used*

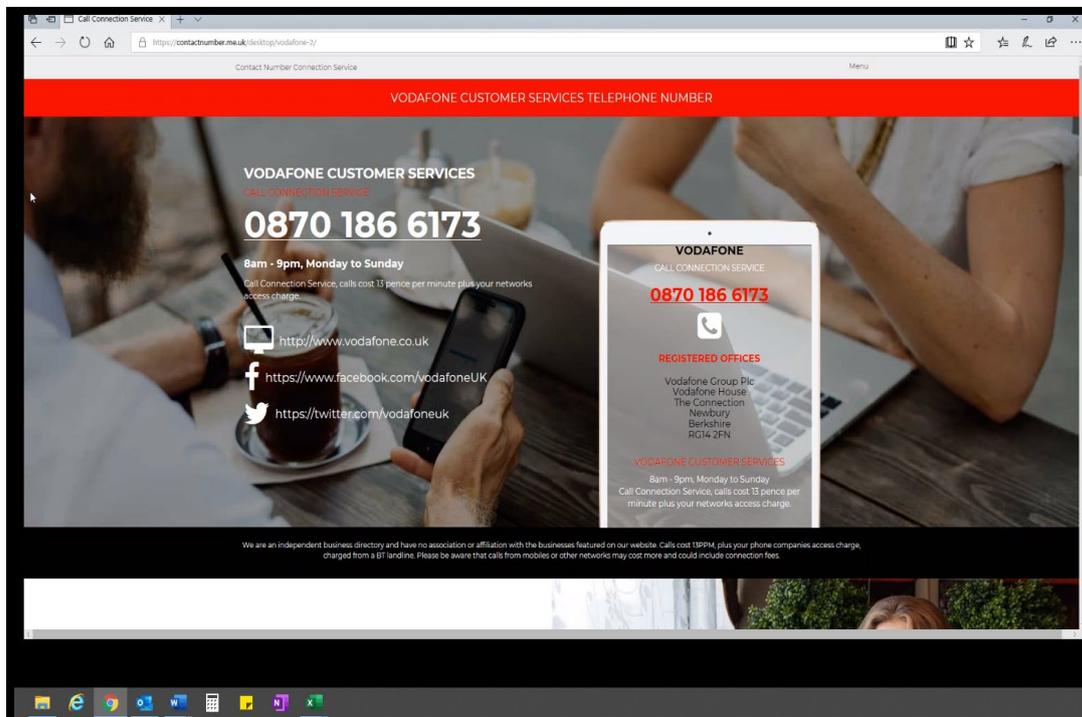
*How it is paid for – one off payment, recurring charges, etc.*

*How to get help where necessary.”*

## Service monitoring

The Executive also referred to the monitoring of the Service it had undertaken in August 2018 and then in September 2019.

The Executive’s monitoring of the Service in August 2018 identified the following service promotion #1 and the URL [www.contactnumber.me.uk/desktop/vodafone-2/](http://www.contactnumber.me.uk/desktop/vodafone-2/).



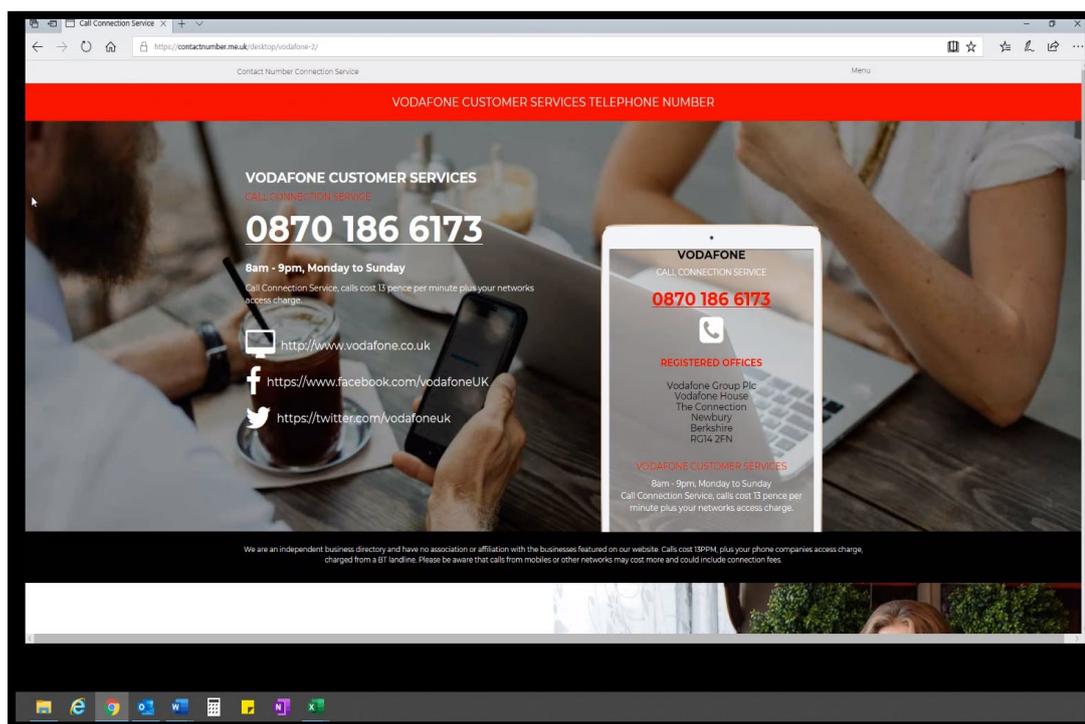
The Executive asserted that the website did not contain the name (or brand, if part of the name) or the contact details of the Level 2 provider.

The Executive considered that this was compounded by the fact that when Service monitoring took place on 23 August 2018, the Service was live, but the Level 2 provider had not at that point registered either itself (as a Level 2 provider) or the service with the PSA. The PSA Registration Database confirmed that the Level 2 provider registered itself as a PRS provider on 17 September 2018 and did not register their premium rate numbers until 22 March 2019.

Further, when the same Service website was accessed a year later on 10 September 2019, it appeared that the Level 2 provider had made some minor changes, however the website still did not provide the name (or brand, if part of the name) and the contact details of the Level 2 provider.

Therefore, the Executive asserted that the Level 2 provider's omission of key information, such as the name (or brand, if part of the name) and the contact details of the Level 2 provider from its promotions, meant consumers accessing the Service were not fully and clearly informed of all information likely to influence their decision to purchase.

The monitoring of the Service on 10 September 2019 identified the following service promotion #1 and the URL [www.contactnumber.me.uk/desktop/vodafone-2/](https://www.contactnumber.me.uk/desktop/vodafone-2/).



The Executive highlighted paragraph 2.3 of the Guidance and paid particular attention to the Guidance that “once on a webpage that promotes a PRS, consumers should not have to scroll down (or up) to view the key terms and conditions (especially, but not limited to, the price – see section 2 of this Guidance), or click on a link to another webpage”.

The Executive relied upon its monitoring of the Service on both desktop and mobile devices as well as monitoring of the IVR and connection to the Service.

The Executive noted that the key service information, such as the contact phone number, was not available at all on the mobile or desktop landing page. The Executive also noted that the brand name was not immediately visible on the landing page, and that if a customer wished to view this information they had to scroll down to the bottom of the page where it states:

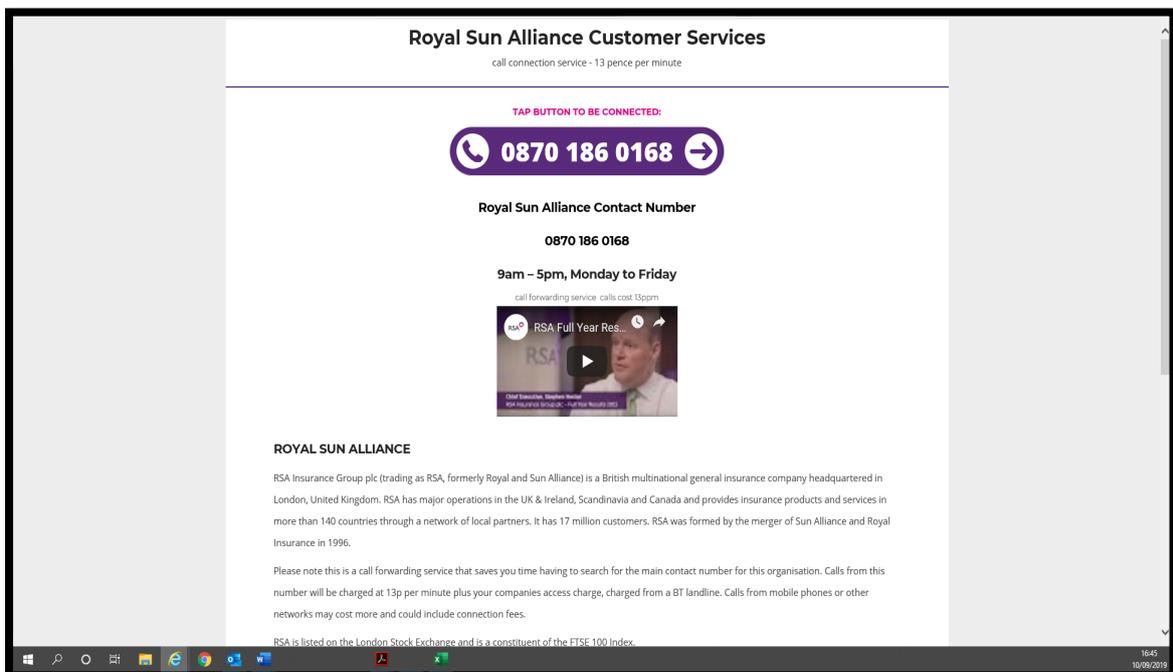
*"...Contact number is a trading name of ECN Digital Ltd 2018..."*

The Executive noted that when conducting an online search for ECN Digital Ltd, no company website was found and therefore consumers searching for contact details this way would not be able to locate them.

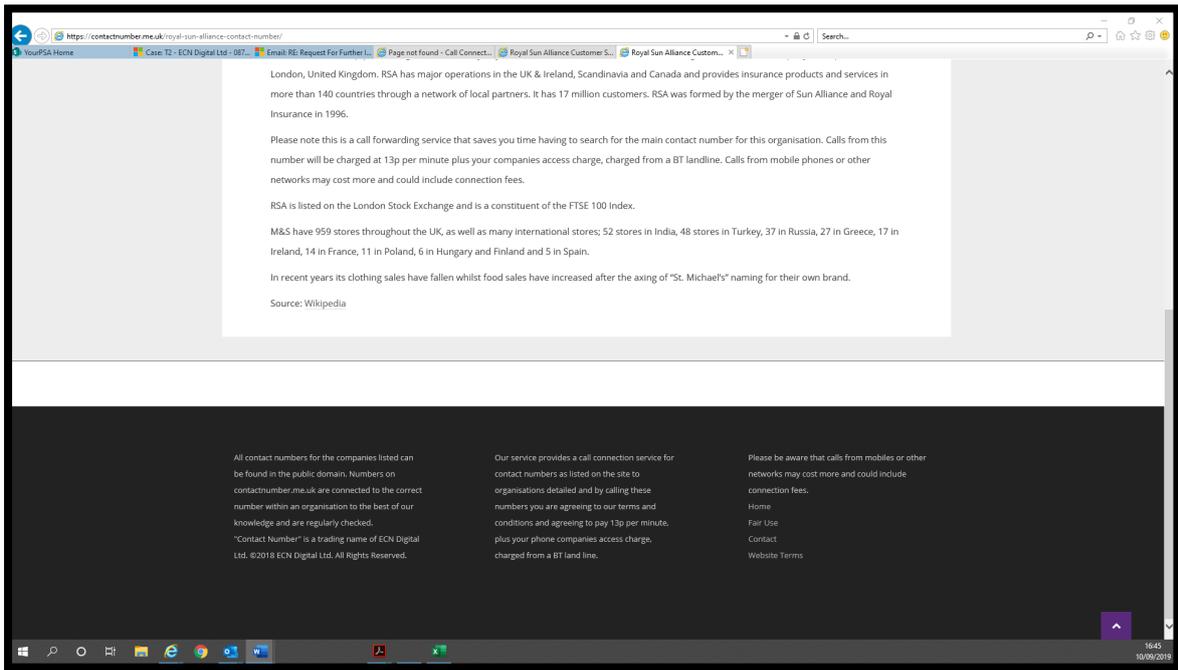
The Executive advised that to the right of the above text there were some links provided (noted in a lighter font colour and not hyperlinked), one of which stated 'contact'. Clicking on this word resulted in an online form that required completion before contact could be made. Again, the Executive advised that no contact phone number was provided. The 'Home' link also provided no detail of the brand name or a contact phone number.

The Executive provided the following screenshots of the website for Service Promotion #2:

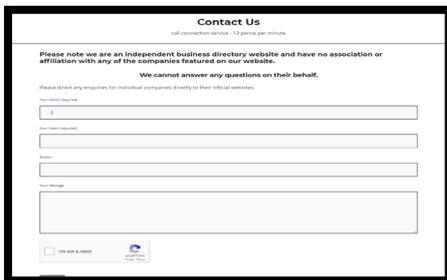
The landing page:



Second and final page:



The results of clicking on the 'Contact' and 'Home' links on the website above:



Therefore, the Executive asserted that the Level 2 provider's omission of the contact details of the Level 2 provider, and presentation of key information such as the name (or brand, if part of the name) from its promotions, meant that consumers accessing the Service were not fully and clearly informed of all the information likely to influence their decision to purchase. The Executive reiterated that paragraph 2.3 of the Guidance states that 'once on a webpage that promotes a PRS, consumers should not have to scroll down (or up) to view the key terms and conditions'. The Executive submitted that this was compounded by the fact that no website existed for ECN Digital Ltd and accordingly consumers would not be able to obtain the Level 2 provider's contact details from a website.

Consequently, the Executive asserted that a breach of 2.2.2 had occurred.

2. The Level 2 provider did not respond to the Warning Notice. It is noted that the Level 2 provider provided an incomplete response to the PSA's request for information dated

12 September 2018 in which it said it was wrongly advised that 0870 numbers were not within the PSA's remit and that all advertising had stopped whilst it changed its advertising to comply with the guidelines.

3. The Tribunal considered the Code and all the evidence before it. For the reasons advanced by the Executive, the Tribunal was satisfied on a balance of probabilities that a breach of rule 2.2.2 of the Code had occurred.

The Tribunal was satisfied that adequate contact details had not been supplied to consumers, as required by the Code, and this was compounded by the fact that the Level 2 provider did not have a website.

Accordingly, the Tribunal upheld a breach of rule 2.2.2 of the Code.

**Decision: UPHELD.**

### **Alleged breach 2**

Rule 2.2.7 of the Code

***“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 because pricing given on the website was not prominent or proximate to the premium rate number on the website.

The Executive referred to the PSA Guidance on Promoting premium rate services and specifically referenced paragraphs 3.2 and 3.7, which state:

Paragraph 3.2:

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

- ‘premium rate charges apply’,
- 100ppm’,
- ‘1.50 GBP’

- ‘50p/min’

Paragraph 3.7:

*“Pricing information needs to be put where consumers will easily see it, not where it is hard to find. This is because the price ought to be part of what attracts consumers into making a purchase. The rules in our Code are there because consumers want this information so they can choose what they buy and how much they pay for it. It is likely to be judged as ‘prominent’ if the information is clearly visible when a consumer makes their purchase and triggers the payment. Both the font size and use of colour are important to establishing prominence.”*

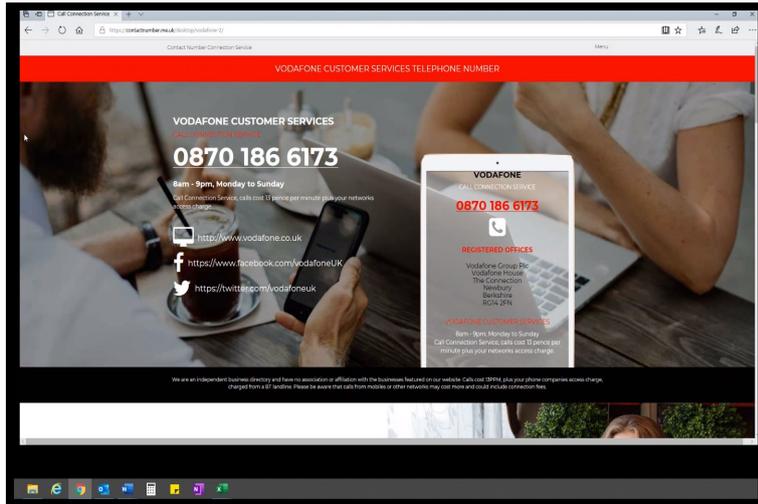
The Executive noted the pricing information for Service Promotion # 1a and 1b were identical apart from the background colour.

The Executive further noted that the premium rate number was the most prominent text on the landing page and was provided twice.

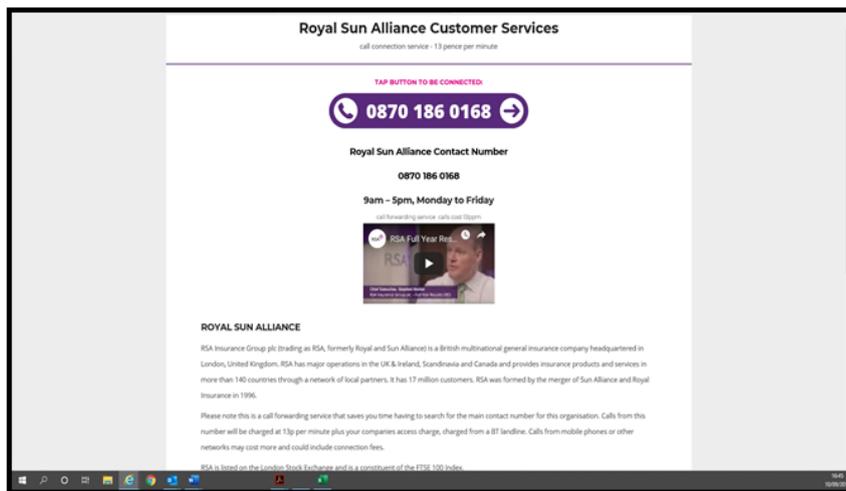
The Executive highlighted to the Tribunal that on the centre-left of the page, the pricing information was presented beneath the premium rate number in a comparatively smaller font. The Executive submitted that as it overlaid a background containing a picture, this made it more difficult to read and consumers may not be drawn to this.

The Executive advised that to the right of the page, the pricing information was presented inside a mock-up mobile phone, which also overlaid a background containing a picture. Beneath the premium rate number was a phone icon, followed by the relevant address of the commercial or public organisation, then the name of the department the Service connected to and then the opening hours, and below all this information was the pricing information. The Executive asserted that due to the location, size and font colour, consumers might not have been drawn to the pricing information.

A screenshot from the Executive’s desktop monitoring can be seen below:



The pricing information was also provided at the bottom of the page; however this appeared in extremely small font and the pricing was presented as “13PPM” which the Executive asserted was unacceptable, as this did not provide sufficient understanding to consumers of how much they were being charged.



The Executive noted that consumers viewing the promotions on a desktop computer were provided with the premium rate number twice on the landing page, once in a large, bright purple call to action box and then again below in bold black font.

In comparison, the pricing information was presented twice in a notably smaller (grey on white font) on the landing page.

The pricing in the centre of the page was presented below the bright purple call to action box and directly above the embedded ‘company’ video and stated: “*call forwarding service calls cost 13ppm*”

The Executive asserted that pricing information presented in that manner was not easy to read once located, nor easy to understand. Paragraph 3.2 of the Guidance, as noted

above, provided clear examples of unclear descriptions of pricing information including the use of 'ppm' as a price descriptor, which the Executive stated was unlikely to provide sufficient explanation to consumers of how much they were being charged.

The Executive further noted that the pricing was also provided at the top of the landing page, however, despite it being presented in the correct format, it was presented in a small grey font below very large bold wording. Furthermore, the pricing at the top of the page appeared with wording and a solid line beneath it.

The pricing and wording above the solid line appeared as follows:

**“Royal Sun Alliance Customer  
Service**

call connection service – 13 pence per minute”

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The Executive asserted that the solid line coupled with the wording was likely to cause confusion. The Executive noted that the wording above the solid line stated “*Royal Sun Alliance Customer Service*”, whereas the wording below the solid line stated “*Royal Sun Alliance contact number*” which the Executive submitted created a further degree of separation and confusion for the reader:

Wording below the solid line:

**“Royal Sun Alliance Contact  
Number”**

**0870 186 0168**

**9am-5pm, Monday to Friday**

“Call forwarding service calls cost 13ppm”

The Executive submitted that when the Service was accessed from a mobile device, its landing page was identical in layout as the desktop.

The Executive asserted that pricing information was not prominent nor proximate, and for those consumers who may have noticed the pricing information they were provided with a loose and unclear description, namely “*calls cost 13ppm*”.

Therefore, the Executive asserted that the Level 2 provider’s presentation of the pricing information alongside different words used to describe the type of service and the creation of a separation between those words meant that consumers accessing the Service were not fully and clearly informed of all information likely to influence their decision to purchase. The above is compounded by some of the pricing being presented as “13ppm”.

Consequently, the Executive asserted that a breach of 2.2.7 had occurred.

2. The Level 2 provider did not respond to the Warning Notice.
3. The Tribunal considered the Code and all the evidence before it, and in particular the monitoring evidence supplied by the Executive.

The Tribunal was satisfied that although pricing information for the service was present, it was not prominent and was not proximate to the call to action. In the Tribunal's view the lack of prominence and proximity of the pricing information was deliberate, noting that the largest typeface was the telephone number and the smallest typeface was the pricing. In addition, the Tribunal noted that the PSA's Guidance specifically prohibited the use of loose or unclear descriptions of price such as "calls cost 13ppm".

The Tribunal was satisfied that the pricing information in respect of the service was not sufficiently prominent and proximate to the premium rate number and that, as a consequence, it was likely that consumers of the Service were unaware of the cost of the Service before using it.

Accordingly, the Tribunal upheld a breach of rule 2.2.7 of the Code.

**Decision: UPHELD.**

### **Alleged breach 3**

Paragraph 3.11.3 of the Code

***"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."***

Special Condition ICSS 5 states:

***"Promotions must not use descriptions, colour or typeface which is, or may be, perceived to imitate the organisation the consumer is looking for. Promotions must not imply that advice and/or information is unique to an ICSS when the same advice and/or information are available from a public or commercial organisation."***

1. The Executive asserted that the Level 2 provider had breached rule 3.11.3 of the Code as a Special Condition applicable to ICSSs had not been adhered to.

The Executive relied upon its monitoring and the content of the Notice of Special Conditions for Information, Connection and/or Signposting Services (“**ICSS Special Conditions**”).

The Executive referred to 3.11.1 of the Code which states:

*“Where the PSA is satisfied that there is or is likely to be a risk of:*

- (a) a significant level of consumer harm; or*
- (b) unreasonable offence to the general public, arising from a particular category of Premium rate service (“a high-risk service”),*

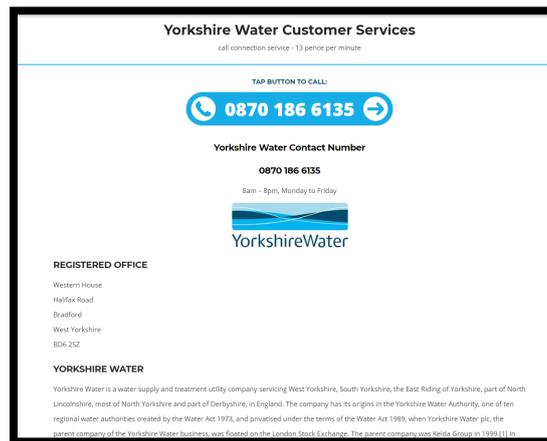
*it may impose conditions (“special conditions”) for the purpose of ensuring compliance with the Code’s outcomes. The conditions which may be imposed are the conditions set out in Annex Two and any related conditions which are necessary for the proper functioning of those conditions.”*

The Executive asserted that the Service fell within the Type 1 category for ICSS since it provided a call connection to public or commercial organisations.

On 12 September 2019, the Executive conducted monitoring and compared the Level 2 provider’s web landing pages to the website of the relevant company and its official company logo.

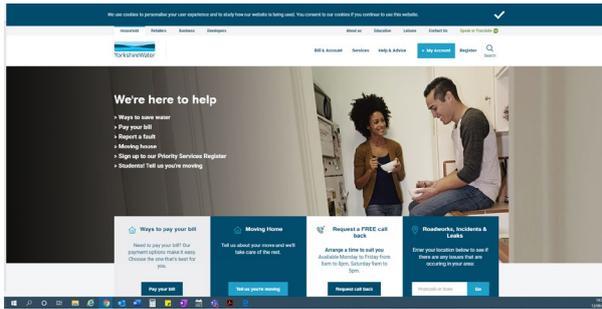
### Example 1:

Level 2 provider’s service promotion:



Yorkshire Water’s actual website:

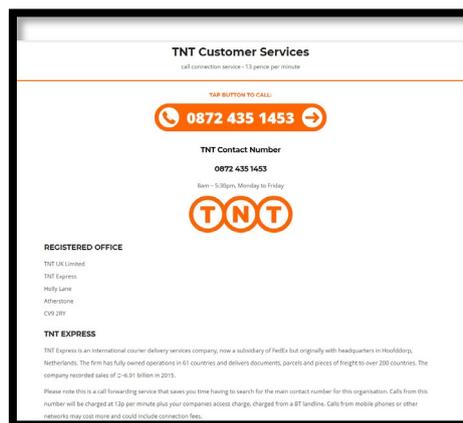
Yorkshire Water’s company logo:



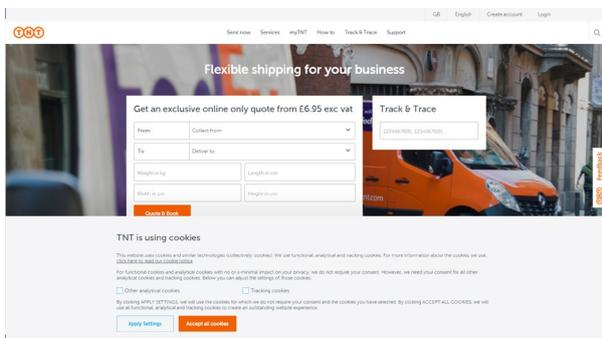
In respect of the above service promotion, the Executive submitted that the landing page contained no less than four direct clickable links that connected directly to the user's phone application. The direct clickable links included the premium rate number promoted in the blue call to action box, the wording "Yorkshire Water Contact Number", the premium rate number in bold, black font and the Yorkshire Water's logo.

### Example 2:

Level 2 provider's service promotion:



TNT's actual website:



TNT company logo:



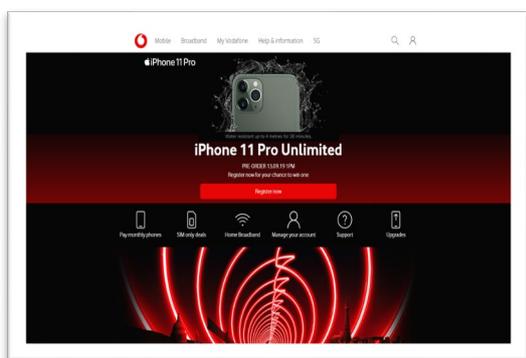
### Example 3:

Level 2 provider's service promotion:



Vodafone's actual website:

Vodafone's company logo:



The Executive submitted that the Level 2 provider had breached Paragraph 3.11.3 of the Code, as Special Condition ICSS 5 had not been adhered to. The Executive asserted that the branding and logos used by the Level 2 provider were extremely similar to the branding and logos of the relevant organisations the consumers were looking for. The Executive further submitted that this was aggravated by the fact that on some promotions, the company logos were clickable links that connected directly to the user's phone.

For this reason, the Executive submitted that, on the balance of probabilities, the Level 2 provider had used promotional material for the Service that imitated the relevant organisations, in contravention of Special condition ICSS 5.

Consequently, the Executive asserted that a breach of 3.11.3 has occurred.

2. The Level 2 provider did not respond to the Warning Notice.
3. The Tribunal carefully considered the Code, Special Condition ICSS 5 and the evidence before it, in particular the screenshots supplied by the Executive. The Tribunal was satisfied that the Level 2 provider had used promotional material for the Service which imitated the relevant organisations in breach of Special condition ICSS 5.

The Tribunal noted that the Level 2 provider had made some minor changes to the promotional material, but this was not sufficient and that the descriptions, colour and

typeface were designed to imitate the relevant organisation and intentionally mislead consumers.

Accordingly, the Tribunal upheld a breach of Paragraph 3.11.3 of the Code.

**Decision: UPHELD.**

#### **Alleged breach 4**

Paragraph 3.11.3 of the Code

***“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.”***

Special Condition ICSS 11 states:

***“Consumers must receive an alert at the start of the call before onward connecting stating the following (in any order):***

- (i) the price per minute;***
- (ii) that the ICSS provider is not [insert the organisation’s name] or that the ICSS provider is [insert ICSS provider name]; and***
- (iii) the name of the end-organisation consumers will be connected to or given the option of connecting to.***

***Caller agreement may be given by pressing a specified key or otherwise responding to the alert, or by remaining on the line to access the service.***

***Imposed under Annex 2, Paragraph 1.1(p): compliance with requirements of relevant regulators and professional bodies.”***

1. The Executive relied upon its monitoring and the content of the ICSS Special Conditions.

The Executive asserted that the Service fell within the Type 1 category for ICSS as it provided a call connection to public or commercial organisations.

The Executive monitored the Service on 30 September 2018 and again on 10 September 2019. The Executive’s monitoring on 30 September 2018 consisted of seven test calls. For four of the seven calls, the pre-recorded message (“**the IVR**”) did contain the price per minute, but did not identify the Level 2 provider, or indicate to the consumer that they were not calling the end organisation directly. For three out of the seven calls, no IVR was provided and the call connected directly to the end

organisation. The Executive's monitoring on 10 September 2019 revealed that the IVR did contain the price per minute, but did not identify the Level 2 provider, nor indicate to the consumer that they were not calling the end organisation directly.

The Executive therefore submitted that consumers calling the Service were either not provided with an IVR at all, or they were provided with an IVR that did not include all the information listed in Special Condition ICSS 11.

The Executive asserted that the absence of this information made it likely that any consumers entering the Service would not have understood the nature of the Service or the pricing for the Service.

For the reasons set out above, the Executive asserted that, on the balance of probabilities, a breach of paragraph 3.11.3 of the Code had occurred, as the Level 2 provider had not adhered to Special Condition 11.

2. The Level 2 provider did not respond to the Warning Notice.
3. The Tribunal considered the Code, Special Condition 11, and all the evidence before it, and in particular the Executive's monitoring in respect of the pre-recorded IVR message or lack thereof.

The Tribunal found that there was evidence that for three out of the seven calls made by the Executive there was no IVR at all, and that for the remaining four calls the name of the ICSS provider was not given nor was the name of the end-organisation.

The Tribunal further noted that consumers were not given an opportunity to disconnect their call, as the Service failed to give consumers a choice to access the Service by simply connecting the call without the consumer's agreement particularly in respect of those calls without an IVR. The Tribunal decided that the three calls without an IVR that directly connected the consumer to the end organisation were particularly egregious.

Accordingly, the Tribunal upheld a breach of paragraph 3.11.3 of the Code.

**Decision: UPHELD.**

### **Alleged breach 5**

Paragraph 3.11.3 of the Code

***"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."***

Special Condition ICSS 13 states:

***“ICSS providers must notify the Phone-paid Services Authority, within 48 hours of making the service accessible to the public, of all applicable telephone number(s) or access code(s) used for the operation of the service and their specific designated purpose. Where these change or new numbers are added, all such telephone number(s) or access code(s) must also be notified to the Phone-paid Services Authority within 48 hours of their being put into public use.”***

1. The Executive relied upon the monitoring it had undertaken.

The Executive asserted that the Service fell within the Type 1 category for ICSS as it provided a call connection to public or commercial organisations.

The Executive further asserted that the Level 2 provider had acted in breach of paragraph ICSS 13 as, during a period of time when the Service was operational, it had failed to notify the PSA within 48 hours of the Service becoming live, of all relevant details of all applicable telephone numbers used for the operation of the service and their specific designated purpose.

The Executive noted that it had been provided with various service commencement dates. In its incomplete response to the request for information in September 2018, the Level 2 provider stated that the Service had commenced in May 2018. The Network operator stated that the premium rate numbers had been allocated to the Level 2 provider from July 2017; however, it subsequently stated that the Service commenced on 28 September 2015.

The Executive stated that according to the PSA registration database, the Level 2 provider first registered with the PSA on 17 September 2018, which was after the PSA had received the complaint about the Service and the Level 2 provider had been put on notice about the Executive’s concerns. Therefore, the Level 2 provider had failed to register with the PSA for almost three years.

Furthermore, the Executive highlighted that on 16 September 2019, the Level 2 provider’s registration lapsed and despite automated reminders from the PSA registration portal being sent, the Executive had to contact the Level 2 provider explicitly requesting it to renew its registration.

In addition to the difficulties outlined above in respect of the Level 2 provider’s registration with the PSA as an organisation, the Executive asserted that the Level 2 provider did not register any of its premium rate number ranges until 22 March 2019. The Executive therefore submitted that the Level 2 provider operated a premium rate ICSS service for three years, five months and 22 days before registering its ICSS premium rate numbers with the PSA.

The Executive asserted that the Level 2 provider's failure to register all applicable telephone numbers used for the operation of the service and their specific designated purpose within 48 hours of making the service accessible to the public, including its failure to register itself as a premium rate provider for a number of years, resulted in the high likelihood of consumers being unable to access information relating to the Service.

In response to questioning by the Tribunal, the Executive explained that it had not raised a registration breach under the Code since it was felt that this was adequately dealt with in this instance by raising a breach of ICSS 13.

For the reasons set out above, the Executive asserted that on the balance of probabilities the Level 2 provider had not adhered to Special condition ICSS 13.

2. The Level 2 provider did not respond to the Warning Notice.
3. The Tribunal carefully considered the Code, Special Condition 13, and all the evidence before it. The Tribunal was satisfied that the relevant service numbers had not been registered with PSA. The Tribunal noted that the failure to register had spanned a long period of time.

Accordingly, the Tribunal was satisfied that the Special condition ICSS 13 had not been adhered to and upheld a breach of paragraph 3.11.3 of the Code.

**Decision: UPHELD.**

### **Assessment of breach severity**

The Executive's assessment of breach severity was as follows:

- Rule 2.2.2 – Serious
- Rule 2.2.7 – Serious
- Paragraph 3.11.3/ Special condition ICSS 5 – Very Serious
- Paragraph 3.11.13/ Special condition ICSS 11 – Very Serious
- Paragraph 3.11.3/ Special condition ICSS 13 – Very Serious

The Tribunal's initial assessment of the breaches of the Code was that they were, overall, **Very Serious**. In making this assessment, the Tribunal assessed the severity of the breaches as follows:

- Rule 2.2.2 – Very Serious
- Rule 2.2.7 – Serious
- Paragraph 3.11.3/ Special condition ICSS 5 – Very Serious
- Paragraph 3.11.13/ Special condition ICSS 11 – Very Serious

- Paragraph 3.11.3/ Special condition ICSS 13 – Very Serious

## Sanctions

### Initial assessment of sanctions

#### Representations on sanctions made by the Executive

1. 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
  - access to the Service be barred for a period of three months or until; 1) full payment of the fine and administration charge and 2) compliance advice has been sought and implemented to the satisfaction of PSA, whichever is the earlier
  - 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 £950,000 broken down as follows:
    - Rule 2.2.2 - £100,000
    - Rule 2.2.7 - £100,000
    - Paragraph 3.11.3 (ICSS 5) - £250,000
    - Paragraph 3.11.3 (ICSS 11) - £250,000
    - Paragraph 3.11.3 (ICSS 13) - £250,000
2. The Level 2 provider did not make any representations in respect of the initial assessment of sanctions.
3. The Tribunal considered the Executive's initial assessment of sanctions and agreed with the Executive's assessment, save for the fine assessment in respect of the breach of 2.2.2. The Tribunal considered the appropriate initial assessment in respect of this breach to be £250,000. This reflected the Tribunal's view of the breach of 2.2.2 being "very serious" rather than "serious". The Tribunal was of the view that the Level 2 provider's conduct in omitting its name and contact details may have resulted in a clear and highly detrimental impact or potential impact, directly or indirectly, on consumers and that the Level 2 provider's conduct was likely to severely damage consumer confidence in premium rate services. The totality of the fine recommended by the Tribunal at this initial stage was therefore £1,100,000.

## Proportionality assessment

### Assessment of mitigating and aggravating factors

#### Aggravation

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

The Executive also asserted that it was an aggravating factor that the breaches continued after the Level 2 provider became aware of them and that the Level 2 provider failed to register its premium rate numbers for a further six months. The provider then allowed its registration to expire and was reminded by the Executive to renew it.

The failure of the Level 2 provider to co-operate with the investigation by sending in delayed and incomplete responses to information requests was also identified by the Executive as an aggravating factor of the case.

The Level 2 provider did not make any representations in regard to the aggravating factors.

The Tribunal did not agree with the Executive that failure to follow Guidance was an aggravating factor and considered that this was part and parcel of the breach. The Tribunal also disagreed with the Executive's assertion that the existence of numerous previous adjudications which highlighted the importance of adhering to Special Conditions was an aggravating factor.

The Tribunal agreed that it was an aggravating factor for the breaches to have continued after the Level 2 provider was made aware of them by the Executive and noted that whilst the Level 2 provider made some minor amendments to the Service, these were insignificant and the Service remained non-compliant. The Tribunal also agreed that the failure of the Level 2 provider to co-operate with the investigation was an aggravating factor.

The Tribunal further considered whether there was an additional aggravating factor on the basis that the Executive were informed that the service had been placed on hold in October 2018 but that monitoring revealed the Service to be live in September 2019. The Executive was questioned about this by the Tribunal; however, the Executive was unable to confirm whether the Service had been placed on hold at any point. As the representation regarding the Service being placed on hold was made by the Network operator, and not the Level 2 provider, this was not taken into account by the Tribunal as an aggravating factor.

#### Mitigation

The Executive submitted that the Level 2 provider had stated that it had refunded the one complainant, although noted that the Level 2 provider had failed to supply any evidence of refunds to corroborate its statement.

The Tribunal considered that there was no evidence either way to support the submission that the complainant had been refunded or not. Accordingly, the Tribunal felt unable to conclude that this was a mitigating factor.

The Tribunal considered whether the Level 2 provider's changes to its promotions was a mitigating factor but concluded that the attempts made by the Level 2 provider were insufficient and in fact contributed towards a delay and obfuscation in this case.

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

The Executive argued that the Level 2 provider had generated an estimated £90,362.77 (out of a total service revenue of £130,524.01) which directly flowed from the breaches in the case, as it was unlikely that consumers would have used the service had they been aware of the charges for the service and that they were not calling the organisation in question directly.

The Level 2 provider did not respond to the Warning Notice.

The Tribunal was satisfied that the revenue did flow from the breaches due to the non-compliant nature of the Service. The Tribunal found 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.

### **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 on the Level 2 provider. In light of this, the Executive submitted that the recommended fine amount should be adjusted downwards in the interests of proportionality, to a total fine of £250,000.

The Level 2 provider did not respond to the Warning Notice and therefore did not make any representations in respect of proportionality.

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

## **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

- bar access for a period of three months, or until full payment of the fine and administration charge, whichever is the later
- general refunds
- a fine of £250,000.

Administrative charge recommendation: 100%