

## Settlement case report for SB7 Mobile Limited

### Introduction

1. The Phone-Paid Services Authority ('PSA') opened an investigation into SB7 Mobile Limited ('SB7') on 8 March 2023.
2. The investigation concerned SB7's failure to comply with a direction for information issued in accordance with paragraph 6.1 of the 15<sup>th</sup> Edition of the Phone-Paid Services Authority Code of Practice ('the Code'). In particular, SB7 did not provide a response within the specified timeframe or the extended deadlines agreed by the PSA. However, SB7 did eventually provide a response to the direction. SB7 also provided details of exceptional circumstances and mitigation which the PSA has taken into account in reaching this settlement.

### The investigation

3. SB7 is a UK-based company which acts as both a merchant provider and an intermediary provider for other merchants of PRS services to consumers in the phone-paid services market.
4. On 18 January 2023, the PSA issued a direction for information ('the Direction') to SB7 as part of the PSA's inquiries concerning an investigation it was conducting. The investigation involves a third-party merchant provider, for which SB7 acts as an intermediary, providing a technical platform and contracting with third parties for the purpose of providing third-party verification, monitoring and compliance services and customer service resource. The PSA sought information from SB7 regarding the third-party merchant provider's Service. Another company acts as a second intermediary for billing services in the phone-paid services market and supplies the billing shortcodes for the merchant provider.
5. The deadline set for SB7 to respond to the Direction was 1 February 2023.
6. On 19 January 2023, SB7 requested a two-week extension stating that: '*...I am anticipating that the preparation of these responses will be time-consuming and will require the input and co-ordination of our internal team and legal counsel. Therefore, I am requesting a 2-week extension from the current deadline...!*'
7. On 24 January 2023, the PSA granted a one-week extension, the new deadline for response to the Direction now being 8 February 2023. This was acknowledged by SB7 on the following day, 25 January 2023.
8. On 8 February 2023, SB7 advised the PSA that it was still working on the response, stating that: "*The responses are with the legal team for review and feedback to us and as soon as we have that we will send the responses over.*"
9. On 10 February 2023, the PSA granted a further extension to 14 February 2023.
10. On 16 February 2023, the PSA issued a warning to SB7 stating that the response was now overdue and should be sent to the PSA as soon as possible. On 17 February 2023,

SB7 acknowledged the email from the PSA stating that it would respond later that day in relation to a different request for information and that the response in relation to the Direction in question “...will follow as soon as possible after that.”

11. The PSA then heard nothing further from SB7 until 2 March 2023 when SB7 provided the following update: “Apologies I have been out of the office unexpectedly the past few days. I am chasing this SB7 Mobile response up now and will update as soon as possible.”
12. On 3 March 2023, the PSA sent SB7 another warning that the response to the Direction was overdue.
13. On 8 March 2023, having heard nothing further, the PSA opened an investigation into SB7’s failure to comply with the Direction.
14. On 16 March 2023, SB7 was notified that the PSA had opened an investigation into its failure to comply with the Direction.
15. On 17 March 2023, the PSA received SB7’s response to the Direction dated 18 January 2023.
16. On 24 March 2023, the PSA requested further information about the reasons for SB7’s delay in responding to the Direction.
17. On 28 March 2023, SB7 provided some (but not all) information about the reasons for the delay in responding to the Direction, including the volume and scope of the response to the Direction, explaining that Directions sent to SB7’s merchant clients also required the input of SB7, and internal business matters, including staff absences. It has subsequently become apparent that a further significant reason why SB7 had been unable to respond in time was due to exceptional circumstances, involving serious health issues.
18. The parties have agreed the following facts:
  - a. SB7 provided all the information requested by the PSA, albeit not within the timeframe provided for
  - b. the information was incidental, limited to due diligence and the verification of certain details
  - c. SB7’s delayed response to the Direction did not have a significant impact on the progression of the investigation into potential consumer harm, and
  - d. the breach was not as a result of organisational failure on the part of SB7.

### **Breach of the Code**

19. The parties have agreed that the following breach has occurred and should accordingly be upheld:

That SB7 has failed to meet the requirements set out in section 6.1 of the Code, specifically paragraph 6.1.5 (a):

Paragraph 6.1.1 (a) and (b) sets out PSA’s power to direct the provision of information required for it to carry out its duties:

*'The following provisions apply on any occasion when the PSA considers it to be necessary and proportionate to direct any PRS provider to disclose information or documents in order to achieve one or more of the purposes of supervision as set out at paragraph 4.2.4 above or for the purposes of engagement and enforcement under Section 5 above:*

- (a) *To the extent permitted by law and subject to the confidentiality provisions set out at paragraph 1.6 above, the PSA may direct any PRS provider to disclose any relevant information or documents within a reasonable time period that may be specified by the PSA. The PSA may also specify the format in which the information or documents must be disclosed.*
- (b) *Where a direction is made under this paragraph, the relevant PRS provider must disclose the requested information to the PSA as well as any information that is reasonably likely to have a regulatory benefit in furtherance of the PSA's general functions in regulating the provision, content, promotion and marketing of PRS.'*

Paragraph 6.1.5 (a) of the Code requires that all PRS providers must provide the information within the specified timeframe:

*'act on any direction, instruction, notice or request for information given by the PSA in accordance with the Code. Where the PSA specifies a timeframe for action or response, that timeframe must be adhered to or an extension promptly requested in writing setting out the reasons why an extension should be granted. Any such extension will be granted only where PSA considers that there are good reasons to do so.'*

Paragraph 6.1.6 states that: "Any failure to comply with any requirement of this paragraph 6.1 will constitute a breach of the Code."

- 20. The PSA asserted that a breach had occurred because SB7 had failed to comply with the Direction by the specified date which, after taking account of the extensions granted, was 14 February 2023. As outlined above, SB7 did not respond to the Direction until 17 March 2023. The PSA also asserted that SB7 had not asked for a further extension and had not engaged with the PSA in relation to late submission of the information subject to the Direction. The PSA also asserted that a failure to provide information to specified timescales could impact the PSA's ability to carry out its regulatory functions.
- 21. Having taken account of relevant factors, the PSA treats all failures to comply with a Direction seriously and asserted that it considered the overall breach severity to be serious.
- 22. SB7 asserted that it did provide a full and comprehensive response to the Direction, (albeit late), which the PSA accepted. SB7 also asserted that the delay was a short one – a matter of weeks (not months) and therefore did not have a significant impact on the PSA's investigation, which the PSA accepted. SB7 also apologised for the delay.
- 23. SB7 provided some information about the reasons for the delay when responding to the Direction on 28 March 2023. On 7 July 2023, it provided further details, which included exceptional circumstances involving a family health emergency, which had a significant impact on SB7's ability to respond to the Direction within the specified timescale.

24. The parties agreed that the breach had occurred as SB7 had not complied with the Direction issued under paragraph 6.1 of the Code as it had not provided the information subject to the Direction within the specified timescale.

### **Breach severity**

25. The PSA had originally classified the overall breach severity as **serious**.

26. Taking into account all relevant factors the parties agreed to the lower breach severity of 'significant', based on the mitigation and exceptional circumstances - particularly that:

- SB7 did respond to the Direction in full
- there was not a lengthy delay in the other investigation due to the breach, and
- the exceptional circumstances relating to the unforeseen family health emergency which impacted on the ability of SB7 to respond in time.

27. It was also agreed that due to the mitigation and exceptional circumstances, the fine should be set at a level lower than the usual bandings.

### **Final agreed sanctions**

The parties agreed that the following sanctions should therefore be imposed:

- a formal reprimand
- a fine of £10,000.

The parties also agree that SB7 is to pay the PSA's administrative costs up to the sum of £10,000.