



Tribunal meeting number 160 / Case 1

Case reference: 45162
Level 2 provider: BKings Group Limited (formerly known as BKings Telecommunications Limited) (UK)
Type of service: Recruitment and recruitment advice/training service
Level 1 provider: N/A
Network operator: Numbers Plus Ltd (UK)

THIS CASE WAS BROUGHT AGAINST THE LEVEL 2 PROVIDER UNDER PARAGRAPH 4.4 OF THE CODE

BACKGROUND

Between 17 April 2014 and 26 June 2014, PhonepayPlus received 33 complaints from consumers in relation to a recruitment and recruitment training and advice service, (the "**Service**"), which often operated under the brand name of "BKT Recruitment" and is operated by the Level 2 provider, BKings Group Limited (formerly known as BKings Telecommunications Limited) (the "**Level 2 provider**"). The Service operated on various 090 premium rate numbers that had been allocated to the Level 2 provider by the Network operator, Numbers Plus Ltd (the "**Network operator**"). Consumers were charged between 61p and £1.53 per minute (plus Network charges). The Service operated from April 2014 and continues to operate.

The investigation

The Executive conducted this matter as a Track 2 investigation in accordance with paragraph 4.4 of the PhonepayPlus Code of Practice (12th Edition) (the "**Code**").

The Executive sent a breach letter to the Level 2 provider on 18 September 2014 and the Level 2 provider provided a response on 2 October 2014. After consideration of the response, the Executive notified the Level 2 provider that it was withdrawing the breach letter and it issued a further breach letter on 17 October 2014. Within the breach letter the Executive raised the following breaches of the Code:

- Rule 2.3.2 - Misleading
- Rule 2.1.1 – Legality
- Rule 2.2.1 (a) – Provision of information
- Paragraph 3.4.12(a) – Registration of numbers

The Level 2 provider responded on 31 October 2014. On 13 November 2014, after hearing informal representations from the Level 2 provider, the Tribunal reached a decision on the breaches raised by the Executive.

The Tribunal considered the following evidence in full:

- The complainants' accounts;
- The emails and job specifications provided by the complainants;
- The emails and job specifications provided by the Level 2 provider;
- Correspondence between the Executive and the Level 2 provider (including directions for information and the Level 2 provider's responses);
- Correspondence between the Executive and the Network operator;
- Screenshots from the Level 2 provider's website;



- Third party forum commentaries on the Service;
- Correspondence between the Executive and several well-known job vacancy websites;
- Correspondence between the Executive and a company operating a postal address for the Level 2 provider;
- Incorporation documentation for the Level 2 provider;
- Extracts from the PhonepayPlus registration database for the Level 2 provider;
- Information regarding the Level 2 provider's addresses;
- Compliance advice previously provided to the Level 2 provider;
- PhonepayPlus Guidance on "Promotions and promotional material";
- PhonepayPlus Guidance on "Employment, employment information and business opportunity services";
- Extracts from the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Business Regulations 2003;
- The breach letter of 18 September 2014 and the Level 2 provider's response of 2 October 2014 including supporting documentation; and
- The breach letter of 17 October 2014 and the Level 2 provider's response of 31 October 2014 including supporting documentation.

Complaints

The majority of complainants reported having been contacted directly by the Level 2 provider, in most cases by telephone, as a result of them either uploading their curriculum vitae ("**CV**") to a well-known job vacancy website or replying to a job advertisement that had been posted on a well-known job vacancy website. Upon ascertaining that the complainant was a job seeker, the Level 2 provider would email the complainant with date and time for a telephone interview and provide them with an 090 number to call. Some complainants reported receiving a job specification attached to the email.

Complainants stated that they had called the 090 number, unaware that they would incur premium rate charges, as such many experienced bill shock. Many complainants interacted with the Service in the belief that they had been shortlisted for a job interview and some complainants also reported being kept on the line for extended periods of time or being asked a series of irrelevant or repetitive questions. One complainant reported incurring charges of £128 plus VAT after interacting with the Service and many complainants reported being on the call for over an hour. None of the complainants were offered employment as a result of their interaction with the Service.

Of the 33 complainants, 15 provided PhonepayPlus with a copy of the email they had received from the Level 2 provider and seven complainants provided a copy of the job specification that had been attached to the email. The Executive relied on the following complaints:

"I was asked to call this number for a job interview after replying to an advert for a job on monster.co.uk I was not informed that this was a premium rate number, or that I would be on the phone for 40 minutes, costing me £28.69. I was asked to call this number for a job interview after replying to an advert for a receptionist job on monster.co.uk. The website for the company the job was advertised at was www.bkingstelecommunications.com. I was sent an email by [name redacted], on email address human_resources@bktassistance.com asking me to call the number at 09:05am on Friday 16th May. I was not informed that this was a premium rate number, or that I would be on the phone for 45 minutes, costing me £28.69. The job interview seemed normal, the questions were those I would expect and the interviewer seemed positive. After the interview was over I received a phone call back from the same interviewer, from a private number, telling me he had recommended me for the position and that I would have to attend a 'real' interview. I asked where this interview would take place and he said that the company had a few locations around London, but it would be near Stonebridge Park station, and that the information would be in an email



I would receive soon. When I received the email from secretary [name redacted] on email address: admin@bktassistance.com I was told to call for another phone interview on Monday 19th May 3.00pm. At this point I realized it was a scam, that I was calling a premium rate number and being kept on the phone to make money, and that there was no job at all. After this I googled the number and found similar complaints from many people on the website: <http://whocallsme.com/Phone-Number.aspx/09022450075/2>. Once I had realized this I recalled that I had heard someone else asking interview questions in the background.”

“On the 11th May 2014, I received a call from this company regarding a vacancy I had applied for on the Government Jobmatch website, since I am currently unemployed. They invited me for a 'telephone interview' the next day at 16.05. They said that I had to call them and in my naivity [sic] I did so. I was kept on the phone for 36 minutes and at the end of the interview was told that I would be contacted within the next two weeks. To date I have heard nothing except this morning I receive my phone bill from EE depicting the call to the tune of £46.25. I am horrified and would ask that you investigate and endeavour to get my money back. I am currently in receipt of Job Seekers Allowance off £7140 and really cannot afford to have this kind of thing happen.”

“Consumer called the number on her mobile phone. Consumer received a phone call from the company saying they saw her cv and they wanted to interview her "they said that they saw my cv and it looks promising to them and they wanted to do a phone interview with me but i had to call on the main office number and they just gave me the 09 number" Consumer saying that they did not say that she was going to be charged to call the 09 number, they said it was there main office number and she had to call it £81.72 - consumer has been charged In the phone call they asked normal interview questions "i thought to my self [sic] that she was asking me alot of questions" Once the call ended consumer contact virgin straight away who told her how much she has been charged consumer has reported it to the police who are saying its a scam.”

“recieved [sic] a phone call about a job interview job (receptionist) called back this morning. 09131260037note 2 first call lasted 20 minutes - £44 He had put his cv on monster.co.uk Consumer didn't feel the interviewer was listening to him. Really long silent pauses between him finishing [sic] an answer and her moving on to the next question. At one point he was put on hold for 6 minutes. He subsequently got a call after the fact offering him another interview.”

The Executive noted that emails received by the complainants all contained similar wording, save for the name of the recipient, the date and time of the telephone interview, the premium rate number and the name of the sender and their company. An example of the email received by a complainant stated:

“Dear [Name redacted]
Many thanks for sending across your C.V. It was lovely speaking with you today, we have taken the time to review your C.V. and are pleased to inform that you have been short listed for this position, as we feel the information provided meets our criteria.

I can confirm you have been booked in for a telephone interview on Friday 30th May at 13.05pm.

Please contact us on our main office line promptly at interview time given on 09131260XXX to conduct the interview.

Please kindly reply to this email to confirm. I wish you all the best of luck with you application.

Kind Regards
Secretary



[Name redacted]

Bkt Recruitment | Your Global Recruitment Group

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Complainants reported receiving job specifications for a number of different jobs, including a customer advisor, a receptionist, an accounts assistant and an administrative role (**Appendix A**).

One complainant recorded the initial call he received from the Level 2 provider, in which the operator informed the complainant that she had seen the complainant’s CV online and understood that he was seeking bar work. The complainant stated he was not looking for bar work and the operator immediately informed the complainant that she could put him forward for the role of an accounts assistant. The complainant was invited to call the following day for a telephone interview and he was informed that this would be confirmed in an email. He provided the Executive with a copy of the email he received.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH 1

Rule 2.3.2

“Premium rate services must not mislead or be likely to mislead in any way.”

1. The Executive submitted that the Level 2 provider had breached rule 2.3.2 of the Code as consumers were or were likely to have been misled by the promotions and the operation of the Service, as, on the balance of probabilities, jobs did not exist. In the alternative, the Executive stated that the Level 2 provider had breached rule 2.3.2 of the Code as promotions for the Service contained inaccurate information and accordingly consumers were misled about the nature of the jobs available.

Guidance

The Executive also relied on the content of the PhonepayPlus Guidance on “Employment, employment information or business opportunity services” (the “**Guidance**”) which states:

“Types of employment services

- 1.1 These services fall into four categories, all of which carry different expectations:



- *Services offered by employment agencies and employment businesses*
Subject to the exception in point 4 below, no charge can be applied to a service which finds, or seeks to find, employment for persons. If providers are found to be charging premium rates to such services, they are likely to be found in breach of paragraph 2.1 of the Code of Practice
- *Services which give general advice about careers and employment, including self-employment.*
These services can apply premium rate charges, but will be subject to PhonepayPlus Code of Practice. Those providing advice should also see Service-Specific Guidance on Advice services
- *Services which give information about the providers own vacancies*
These services can apply premium rate charges, but will be subject to PhonepayPlus Code of Practice
- *Services which seek to find work for performers and certain other workers in the entertainment field (except photographic and fashion models)*
These services can charge for their services to work-seekers in respect of the occupations listed in Schedule 3 to the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended by the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010) (“the regulations”), subject to various limitations and requirements set out in the Regulations. Providers should note that the use of PRS is likely to breach the Regulations where it takes the form of ‘up-front’ costs, unless the PRS charges relate directly to the entry of work-seekers into a job seeker or job search publication and various other requirements are satisfied, including the provision of a cooling off period. Providers are strongly advised to refer to the Regulations for further information, and seek legal advice accordingly.

2. How to avoid the service being considered misleading

2.1 Section 2.3 of the PhonepayPlus Code of Practice_(Fairness) sets out a number of Rules to ensure consumers are treated fairly and not misled in any way. In particular, Rules 2.3.2 and 2.3.10 are relevant to employment and business opportunity services.

2.2 Providers should take all reasonable steps to:

Ensure promotions correspond to genuine vacancies and/or opportunities, the existence of which should be fully substantiated on request;
 Not mislead a caller as to the conditions, necessary qualifications, availability or extent of any potential employment or business opportunity;
 Not make claims relating to earnings, unless the evidence that such earnings are currently and regularly attained by existing employees (or equivalent) is readily available;
 Clearly state any additional expenditure, including any investments, that may be required over and above the cost of the telephone call;
 State the type of work to be done and its geographical location;
 State the number of workers required;
 State the basis and level of remuneration and, where known, the level of earnings that may realistically be expected.”

Complaints



The Executive relied on the content of all the complaints received but particularly noted the complaints in the “Background” section above. Further, the Executive relied on the content of the emails and the job specifications provided by the complainants.

Reason one: The promotions and the nature of the Service misled consumers as, on the balance of probabilities, jobs did not exist.

During the course of the investigation, the Executive directed the Level 2 provider to provide information about how the Service was intended to be operated. On 3 June 2014, the Level 2 provider stated:

“BKT recruitment consultancy provides candidates with training and tips for finding successful employment.

“We also provide training interviews to prepare and brief candidates on how to secure job roles and also recruit various candidates within our organisation after they have participated in the consultancy training programme and are successful.”

On the 22 July 2014 in response to a further direction for information, the Level 2 provider stated the following:

“BKings Telecommunications commenced trading as a telecommunications company in providing technical support to consumers and the general public. BKings is a diverse company that offers a fully comprehensive answering service for different companies. Our company is currently in process of setting up a recruitment consultancy firm... We are currently still in the process of becoming a recruitment consultancy firm. However we have started to conduct a training programme for candidates with our consultants who are looking for work this is done by training telephone interviews along with general advice on how to be placed into successful employment...”

“Through our company expanding our services and having a new office space we had placed a company ad to hire within the company for a number of job roles such as a receptionist, account assistance as we needed staff for our Wimbledon office. As well as Customer advisers for our telecommunications service and recruitment consultants and also diary consultants for our new service...”

Throughout its responses, the Level 2 provider stated that the Service was concerned with recruiting for internal positions rather than recruiting for third parties. On 27 August 2014, in response to a further request for information, the Level 2 provider stated it was recruiting for its new recruitment consultancy service and stated:

“...at the time of hiring we were looking for up to 3 customer advisers [sic], 1 reception/secretary, 4 recruitment/diary consultants and 1 admin assistant to assist our company administrator.”

On 5 September 2014, the Level 2 provider stated that it currently employed 22 members of staff.

During the investigation, the Executive requested that the Level 2 provider supply the Executive with a copy of the promotional material viewed by complainants. The Level 2 provider supplied a copy of the promotional email and the job specification sent to some complainants. The Executive conducted a detailed comparison of the job specifications received by the complainants and those that the Level 2 provider stated had been sent to the complainants and



discovered that there were a number of discrepancies. The analysis revealed that in most cases the jobs that the complainants thought they were applying for, were not the same jobs that the Level 2 provider had stated the complainant was applying for. In particular, the Executive noted the following:

- In relation to two complainants, the Level 2 provider supplied the Executive with the same job specification for the role of a customer advisor and an accounts assistant. However, one complainant reported receiving a job specification from the Level 2 provider for the role of "receptionist and secretary" and the other complainants reported receiving a job specification for the role of "receptionist and switchboard".
- The Executive noted that the content of the job description often did not match the name of the job role. For example, a job specification provided by a complainant was headed "Customer assistant", but the description of the role underneath appeared to relate to a financial and/or accounts role, as the role was said to involve, "preparation of statutory and non-statutory accounts", "action HMRC correspondence", "assist in the preparation of quarterly VAT returns" and "liaise [sic] with previous customer accountants to gather information".
- A complainant provided the Executive with two job specifications they had received for the roles of a secretary and a receptionist. The Executive noted that although the job titles were different, the content of the role described within the job specification was the same. The job specification headed "Secretary" referred to the role of a receptionist in the body of the text, as it stated, "This is a unique opportunity for a professional and friendly Receptionist to join one of our key client whom [sic] is in London."

The Executive noted that all the job specifications provided by the complainants referred to the role being for "our client". The Executive asserted that this phrase suggested that the positions available were with third party employers and that it was acting as a recruitment consultant. The Executive noted that this was contrary to the Level 2 provider's assertions in correspondence, as it stated that it was not seeking to find candidates work externally and all the positions advertised were internal vacancies within the Level 2 provider.

The Executive also noted that a complainant, had reported receiving an attachment to an email but it did not resemble a job specification. The document was entitled "Accounts Assistant specific" and contained a list of questions that an interviewer was likely to ask an interviewee. The Executive noted that the end of the email stated, "Please follow this link if you exhaust all your questions". The link directed the Executive to a video on YouTube, which contained further generic interview questions. The Executive asserted that this was likely to have been sent to the complainant in error and was a sample of questions that the Level 2 provider would ask a job seeker during an interview. The Executive submitted that if an operator had been conducting a genuine interview it would have a list of questions that it wanted to ask rather than asking a list of generic questions and/or having to search websites for further questions.

The Executive noted that the promotional emails that were sent to the complainants were signed in the name of "BKings Telecommunications Limited", "Bkt Recruitment" or "Bkt Recrutement". Those that referred to BKings Telecommunications Limited contained a link to the Level 2 provider's website, www.bkingstelecommunications.com. Emails sent to the complainants in the name of "Bkt Recruitment" or "Bkt Recrutement" contained a link to the Level 2 provider's website, www.bkt-recruitment.com. The Executive visited both websites on 4 June 2014 and obtained screenshots (**Appendix B, C and D**).

The Executive noted that the website bktrecruitment.com referred to the Level 2 provider as "Executive Recruitment Consultants" and it stated that, "We are a executive human capital



recruitment consultant company specializing in senior level executive search and recruitment [sic]". The Executive noted that this was contrary to the Level 2 provider's assertions in correspondence, that it was only conducting internal recruitment.

The Executive conducted enquiries into the logos that were displayed on the Level 2 provider's website and discovered that some of the logos required permission to be used, as they often demonstrated that a company had attained a quality standard and/or was affiliated with a reputable professional body. The Executive contacted two of the companies to ascertain whether the Level 2 provider had the authority to use its logo. Both stated that it had no record of the Level 2 provider and it did not have permission to use its logo. Accordingly, the Executive submitted that the Level 2 provider had used reputable logos when it did not have permission to do so.

The Executive submitted that the wording used on the website created the impression that the Level 2 provider was a genuine recruitment agency with job vacancies with third party employers. In addition, the logos appeared to have been used to add legitimacy to the Service, but they further added to the misleading impression that the Service was a genuine recruitment agency.

The website also made reference to the Service being, "one of the leading recruitment consultancy agencies in London, Dorset and the South East." During correspondence with the Level 2 provider, it stated that it only had offices in Wimbledon and Wembley. In addition, the Executive also noted that a number of the job specifications provided by complainants referred to job vacancies being available in Essex, Surrey and London. During the course of the investigation, the Executive contacted the well-known job websites and obtained copies of the job advertisements placed on the website by the Level 2 provider. It noted that all the job advertisements referred to positions in London but one advertisement stated that a position was available in the city of London.

In light of the Level 2 provider's assertion that the Service only involved recruitment for internal positions and the various locations referred to in the job specifications and advertisements, the Executive attempted to ascertain how many offices the Level 2 provider had. The Executive identified the following addresses for the Level 2 provider:

- The Level 2 provider's registered address, as confirmed by Companies House was at an address in London ("**Address one**").
- The Level 2 provider's registered address on the PhonepayPlus registration database was an address in Wembley, London ("**Address two**").
- A further address in Wembley, London was stated on the Level 2 provider's website in the terms and conditions section ("**Address three**").
- During correspondence, the Level 2 provider disclosed an address that it stated it used as an office which was in Wimbledon, London ("**Address four**").

On 22 July 2014 in response to a direction for information, the Level 2 provider stated that Address two was its office. It explained that it had set up a forwarding address, which was Address one and it also used Address four which was its "consultancy office and answering service office". On 27 August 2014, in relation to Address four, the Level 2 provider stated "We commenced official operation in Wimbledon in July we had only held interviews their [sic] for candidate who was not able to travel to our Wembley office". On 1 September 2014, the Level 2 provider was again asked to clarify the whereabouts of its offices and it stated, "We have some staff that work in Wembley and some in Wimbledon as its [sic] done on a rota basis".



The Executive conducted enquiries into all the addresses and established that Address one was a mail forwarding address and Address four was a virtual office space. Further searches revealed that Address two was a residential address registered to the London Borough of Brent and was local authority accommodation and not a commercial property. Accordingly, the Executive submitted that Address one, two and four were unlikely to be offices that could accommodate employees.

In relation to Address three, the Executive was not able to ascertain whether the Level 2 provider was based there, although it received confirmation from the building's management company that the Level 2 provider was a client and virtual offices operated from that address.

The Executive submitted that the evidence demonstrated that the Level 2 provider did not have offices in Essex, Surrey, the City of London, Dorset and the South East. The three addresses disclosed by the Level 2 provider in correspondence (Address one, two and four) were either a virtual office or a residential address which were unlikely to be a work place for the 22 employees that the Level 2 provider stated it employed. The Executive acknowledged that the Level 2 provider may have operated its business from Address three but this was not an address that the Level 2 provider had stated that it had used to operate its business. In light of the evidence presented, the Executive submitted that the job specifications referred to offices and work places that did not exist.

The Executive noted that the Guidance stated that providers who are operating employment services should take all reasonable steps to ensure promotions correspond with genuine vacancies and/or opportunities and the existence of which should be fully substantiated on request. The Executive stated that throughout the investigation it had made numerous requests for the Level 2 provider to substantiate its claims that there were genuine internal job vacancies. On 30 May 2014, 15 July 2014 and 1 September 2014, the Executive requested that the Level 2 provider confirm or provide the following:

- The number of employees recruited as part of the recruitment campaign between April and July 2014;
- The total number of vacancies;
- The telephone recordings of the job interviews;
- The telephone job interview script;
- All emails exchanged with the job seekers during the application process;
- Notes of the interviews conducted with the complainants;
- Names and details of all the successful candidates;
- Contracts of employments for all the successful candidates; and
- Payslips for the successful candidates.

The Executive acknowledged that the Level 2 provider had provided some information regarding the successful candidates, but it asserted that it had not provided full and complete explanations or evidence to substantiate that jobs existed. Specifically the Executive noted:

- The Level 2 provider stated that:

"at the time of hiring we were looking for up to 3 customer advisers, 1 receptionist/secretary, 4 recruitment/diary consultants and 1 admin assistant to assist our current company administrator. [Name redacted] has been hired as one of our consultants. [Name redacted] had been hired as an apprentice to help the consultants. [Name redacted] is our company secretary. Although we ended up hiring more staff than anticipated."



The Executive noted that this equalled nine positions. However, it also noted that some complainants' received job specifications for positions that were not included on this list, such as an accounts assistant. The Executive further noted that the Level 2 provider had also referred to an employee being hired as an apprentice, which was not one of the nine roles stated by the Level 2 provider.

- Accordingly, the Executive sought clarification from the Level 2 provider and requested, "For each employee recruited as part of your recruitment campaign between April and July 2014, please confirm the date their role was advertised, their interview date, start date of their employment, their salary and the office they work in". The Level 2 provider responded and stated, "we had advertised at the begin [sic] of April and had interviewed candidates immediately after successful telephone interviews. Some people had different start dates as you would see attached on our signed staff handbook from two of my staff. Starting salary for current staff was advertised £8.00-12 but as we felt some candidates never had the required experience the company negotiated starting salary at £7.00 per hour and reviewing after 3 months". The Executive submitted that the response was unclear and the Level 2 provider had failed to provide the evidence requested or explain why it was unable to do so.
- The Level 2 provider also stated "in total we needed a total of 9 staff however after a trial period we had to let some candidates go as they were not working to the standard required. To date we hired up to 15 more staff which had completed our 22 staff total however as we had some candidates either leave or we felt not suited we had given the opportunity to other candidates had filled the empty vacancies [sic]." The Executive submitted that the Level 2 provider had not provided the names, job roles or any further evidence to demonstrate that staff were employed.
- The Executive also requested copies of contracts of employment for all the successful candidates that had been employed by the Level 2 provider following the internal recruitment campaign between April and July 2014. The Level 2 provider provided signed "Staff Handbooks" for three members of staff but it failed to provide evidence for any other candidates that had been employed after interacting with the Service.
- The Level 2 provider supplied 13 payslips that it stated demonstrated that 13 members of staff had been paid in July 2014. Following service of the breach letter, the Level 2 provider supplied a further 30 payslips for August and September 2014 for 19 employees, some of whom were the same as the 13 employees identified in the payslips for July 2014. The Level 2 provider did not explain if the employees were employed after interacting with the Service. The Executive asserted that if the Level 2 provider had recruited 22 employees as previously stated the number of payslips was incomplete.
- The Level 2 provider supplied identification documents for four employees. After service of the breach letter, the Level 2 provider supplied a further copy of an identification document for another employee. However, it did not provide identification documents for all employees recruited through the Service.
- The Level 2 provider stated that it was not able to provide any of the call recordings of the job interviews conducted with the complainants. The Executive noted that the Level 2 provider supplied screenshots of notes taken during three telephone interviews. The Executive noted that the "Position Applied for (Notes)" field contained less than two lines of information. While, it was not possible to see the call duration (which had been cut off) the Executive understood that the duration of consumer calls to the Service often



exceeded an hour and as such the Executive submitted that two lines of information was not sufficient to demonstrate that a job interview had taken place.

The Executive submitted that, despite the Guidance that required providers of employment services to be able to substantiate that jobs exist, the Level 2 provider had not provided clear answers nor had it provided satisfactory evidence to demonstrate that the positions it had promoted existed.

Consequently, the Executive noted that the Level 2 provider had given different accounts of how the Service operated and this was often inconsistent with the evidence obtained from complainants and as a result of the Executive's own investigation. The Executive noted the consistent accounts and evidence provided by the complainants, which suggested that the complainants had not been applying for internal positions. Moreover, the Executive noted the lack of and/or incomplete evidence provided by the Level 2 provider to demonstrate that jobs existed. The Executive submitted that the Level 2 provider had not provided a consistent account in relation to how the Service operated as many of the stated locations on the job specifications were not genuine. Accordingly, taking all the evidence into consideration and due to the lack of any full and complete evidence from the Level 2 provider to confirm that genuine job vacancies existed, the Executive submitted that the promotions and the Service had misled consumers as no genuine jobs existed.

(In the alternative) Reason two: Consumers were misled as promotions for the Service contained inaccurate information about the nature of the jobs available

The Executive submitted, in the alternative to reason one, that email promotions and job specifications for the Service had or were likely to have misled consumers about the job they were applying for as the promotions contained inaccurate information about the job vacancies, including the geographic location, the type of job and the salary.

Complainants were given inaccurate information about the location of the jobs available. The Executive noted that some of the job specifications sent to complainants referred to the locations of the jobs as being in Essex, Surrey and the City of London. The Executive further noted that the Level 2 provider had stated that the Service sought to recruit for internal vacancies which were based in Wimbledon and Wembley. The Executive submitted that consumers were not provided with accurate information about the location of the job vacancies and this information was likely to affect their decision to interact with the Service.

The Executive obtained job specifications from the Level 2 provider that it stated had been sent to consumers attached to the promotional email. As outlined above, the Level 2 provider supplied the same job specification for two complainants. The Executive asserted that the job described on the job specification provided by the Level 2 provider must have been the job the complainants were applying for. Despite this, both complainants provided a job specification for another position that they stated had been supplied by the Level 2 provider. In light of this, the Executive asserted that some consumers were misled about the type of job they were applying for.

The Executive notes that the salary stated on some of the job specifications sent to the complainants was £8.00 per hour. A review of the payslips provided by the Level 2 provider highlighted that no employees received £8.00 per hour. During correspondence, the Level 2 provider stated:

“Starting salary for current staff was advertised £8.00-12 but as we felt some candidates never had the required experience the company negotiated starting salary at £7.00 per hour and reviewing after 3 months”.



The Executive submitted that promotions for the Service misled consumers about the salary of the job advertised.

The Executive noted the wording in the job specifications provided to complainants referred to "our client". This in conjunction with certain phrases on the Level 2 provider's website was likely to lead consumers to believe that Level 2 provider was a recruitment consultancy that sought to find candidates employment with third party companies. The Executive submitted that it was important that consumers were provided with full and accurate information about the nature of the job they were applying for before interacting with the Service, as any information provided was likely to affect a consumer's decision to engage with the Service. Consumers that were provided with inaccurate information were likely to have been misled about the job vacancy on offer.

In summary, the Executive submitted that consumers were or were likely to have been misled about the nature of the Service, because, on the balance of probabilities, jobs did not exist. In the alternative, the Executive submitted that consumers were or were likely to have been misled as they were not provided with accurate information about the job vacancies available. Accordingly, the Executive asserted that the Level 2 provider had breached rule 2.3.2 of the Code.

2. The Level 2 provider stated that it partially accepted that a breach of rule 2.3.2 of the Code had occurred. It had considered the Executive's comments and believed that it could have taken steps to make the pricing information clearer in the promotional emails that were sent to consumers. The Level 2 provider submitted that it had remedied the breach by placing more emphasis on the cost of the Service. The Level 2 provider explained that the main purpose of the Service was to hire staff for internal vacancies.

The Level 2 provider specifically addressed the complaints received by PhonepayPlus and stated that the promotional emails that had been sent to PhonepayPlus by the complainants could have been subject to alteration and it was difficult to tell whether they had been tampered with to suit the alleged complainant. The Level 2 provider did not accept that complainants had received emails without the cost of the Service and it stated that all promotional emails contained pricing information. The Level 2 provider highlighted some complaints which it stated demonstrated that the complainant was aware of the cost of the Service, which stated:

"...at the end asked the cost"

"they had stated that the call would be 62p per minute and I had agreed"

"I then realized it was a premium rate number because the email stated that when I call their number I will be charged 61p per minute plus their network extras"

"I found it very difficult to consider the cost of my phone call".

The Level 2 provider clarified that its trading address was Address three and Address one was its registered address, which it accepted was a family home and not a business address. Further, it apologised for previously providing incorrect information to the Executive about Address four, which it stated was only a mail forwarding address and no staff were based there. The Level 2 provider explained that it had had candidates arrive at Address three without notice. It had also discovered a third party forum website which had sought to discredit the Service and it was alarmed at some of the comments that had been posted. Due to a fear of any repercussions, it had decided to set up a mail forwarding address at Address four. The



Level 2 provider stated that it had always admitted that Address one was a PO Box and it would have been very unusual for it to have sent a candidate to that address for an interview. The Level 2 provider stressed that after the interview process all candidates were always able to contact it via its email address or on a non-premium rate telephone number, so a candidate would have no difficulties making contact.

The Level 2 provider stated that it had noted the Executive's comments about its website but as a small growing company it had simply embellished some of the information in an attempt to grow and establish the company. The Level 2 provider stated that it prided itself on being the best in the UK marketplace and wanted to convey this on its website. It admitted that it had used some logos which it was not permitted to do so but it stated that it had only done so in an effort to market the company. It had now obtained confirmation that it was a member of one of the companies and was able to use the logo.

The Level 2 provider explained that some of the job specifications referred to jobs in Essex and Surrey because if a candidate was successful in obtaining a job with the Level 2 provider they would have the opportunity to work from home. Accordingly, the location placed on the job specification related to the candidates' home location. The Level 2 provider asserted that it had never stated that its business operations were from any location other than London.

The Level 2 provider noted that the Executive had made reference to all the job specifications supplied by the complainants stating "our client" but it submitted that:

"...this is not the case as the company does not have a specific client to place candidates into employment for, and thus it would be a clear breach of phone pay plus guidelines. We can only assume that it may have been an error on behalf of the company as the template used for the job specification stated "our client" this may not have been altered or removed by members of staff."

The Level 2 provider accepted that consumers may have regarded this as misleading. Notwithstanding this, the Level 2 provider stated that the term "our client" had not been mentioned by all complainants and it highlighted a complainant who had attended its Wembley office for an interview and stated that this complainant was fully aware that the position she had applied for was an internal vacancy. Another complainant had responded to a job advertisement on a well-known job vacancy website and the Level 2 provider stated that the job advertisement had made it very clear that the job was for a position within the Level 2 provider.

In relation to the Executive's assertion that no jobs exists, the Level 2 provider stated that it was able to provide evidence, by way of an employee's telephone bill to demonstrate that the employee had conducted a telephone interview with Level 2 provider. It stated that the member of staff was still on her probationary period and therefore "has not actually been contractually signed of [sic] but rather adheres to a company agreement."

The Level 2 provider stated that it had provided the Executive with copies of two employee's identification and signed staff handbook declarations. It stated that it had requested former staff provided copies of their phone bills to verify that they interacted with the Service. It had not kept them at the time as it was not aware that it was required to do so but it stated that it aimed to submit this information before the Tribunal. Accompanying the Level 2 provider's response to the breach letter, it provided copies of pay slips for 19 employees for August 2014 and September 2014, confirmation that it had become a member of an organisation and as such was permitted to use its logo, three pages from the Level 2 provider's lease for its



Wembley address, two pages of the signed staff handbook for an employee and the employees phone bill.

The Level 2 provider provided oral submissions and stated that it felt there had been some confusion with its responses and wanted to take the opportunity to explain its position. It stated that PhonepayPlus had been very helpful and it was keen to continue to work alongside PhonepayPlus. The Level 2 provider explained that it had taken on board any suggestions and advice from PhonepayPlus as demonstrated by the fact that it had recently changed its name to BKings Group Limited to ensure that there was no further confusion for consumers. It now felt that the Service was fully compliant with the Code.

The Level 2 provider accepted that it had made some mistakes with the Service, which could have been avoided, but it strongly asserted that there were jobs available for each and every candidate. It also accepted that the promotional emails for the Service were, in some respects misleading but it stressed that it had never been its intention to mislead consumers and regretted that some consumers may have been misled. The Level 2 provider asserted that, in its experience, consumers of premium rate services often deny that they have incurred any cost, even when a Level 2 provider has evidence that the consumer was aware of the cost. In the future, it had decided to record calls to the Service to ensure that it was able to prove that consumers had been given full and clear pricing information.

By way of background, the Level 2 provider explained that one of its directors had been a manager of a premium rate service providing technological support. After four successful years in the role, the director decided to set up the Level 2 provider. The Service was originally a technological support service but after a period of time it became clear that this would no longer be feasible and the Level 2 provider sought to develop the business into a recruitment consultancy service. The director of the Level 2 provider accepted that she had limited experience in recruitment but she stated that she had a keen interest in this type of work and a willingness to learn. The director had teamed up with her brother, another director of the Level 2 provider, who had studied business and law at University and had previously worked in recruitment. The Level 2 provider stated that there was a gap in the market and it thought that combining recruitment with a premium rate service was a good idea. The Level 2 provider stated that it had read the PhonepayPlus Code and the Guidance and understood that it was a legitimate to use premium rate numbers for internal recruitment as such, after conducting some research it was satisfied that it had a viable business model. The Level 2 provider stated that it was aware that some may disagree with using premium rate numbers for recruitment but it did not believe that it was doing anything wrong. The Level 2 provider had not received any professional support in drafting a business plan but it had received some help from an organisation that helped with the start-up of small companies.

The Level 2 provider explained how the Service operated and stated that it would review CV's posted on certain well-known job websites and if a job seeker appeared suitable for one of its positions, the Level 2 provider would contact them to ascertain if they were still looking for work. Consumers would be invited by email to call one of its premium rate numbers for a job telephone interview. Once a consumer had called the Service a job interview would be conducted over the phone. The Level 2 provider stated that it always had a number of positions available as it had a high turnover of staff. The Service continued to operate, although, it conceded that the numbers of callers had reduced dramatically as it believed that third party forums had put people off. A successful candidate may be invited for a face-to face interview and required to complete unpaid probationary work on a temporary basis. The staff it had recruited were employed to make calls to other job seekers in an effort to recruit them to



do the same job. It planned to start a recruitment consultancy and accordingly was recruiting for its new venture.

In relation to the Level 2 provider's endeavours to set up a recruitment consultancy, it stated that it had found it hard as a relatively new company with limited experience to get recruitment business. It had pitched to companies to persuade them to let the Level 2 provider supply them with candidates. More recently, at least two companies had agreed for the Level 2 provider to conduct its recruitment on its behalf, one of which was a care home. The Level 2 provider stated that at a similar time it had continued to operate an answering service for different companies and a recruitment training and advice service. It confirmed that its staff would search job websites and find job seekers to call and invite to participate in its job training and advice service. It accepted that it would keep candidates information on its database in the hope that it could find them work with a third party once the recruitment consultancy was underway. It stated that it was currently in the process of building a CV website that enabled job seekers to upload their CV and a short audio file for prospective employers to hear. The Level 2 provider confirmed that it does not require consumers to call a premium rate number to use this website and at the moment it was supporting this venture through savings but it hoped in the future that it could charge prospective employers that wished to access the information held on the website. It stated that it had put this on hold, until the PhonepayPlus investigation had concluded.

The Level 2 provider stated that its main source of revenue was from the calls to its premium rate numbers for its internal vacancies. It clarified that the revenue information provided by the Level 2 provider and confirmed by the Network operator had been generated by use of the premium rate numbers for the internal recruitment campaign and providing job advice and training.

The Level 2 provider stated that it had not placed any candidates in an external job as the recruitment consultancy service was still in its infancy. The job specifications that had been sent to the complainants were for internal positions within the Level 2 provider. It stressed that it had attempted to be as transparent as possible and if a consumers had been invited to apply for a job or training, it had tried to make it clear.

The Level 2 provider stated that it currently employed eight people and they worked from its Wembley office (Address three). These employees had been recruited after interacting with Service. It was unable to say how many employees had been recruited as a result of the Service, as there had been many and most had only been employed for a short period of time, often for no more than an unpaid probationary period of three or five days. Although, it stated that it had one long serving member of staff.

The Level 2 provider stated that it had made some mistakes with the Service. The Level 2 provider urged the Tribunal to have regard to the fact that its directors were young individuals, who were trying to make a success of a small business and although it accepted that some mistakes had been made along the way and "it could have done better", it was keen to make amends by improving the transparency of the Service by ensuring there was greater clarity regarding the cost of the Service. The Level 2 provider acknowledged that it could see why some consumers may have believed that the Service was a "scam" but it stated that was not the case.

The Level 2 provider stated it had supplied a lot of information to the Executive about the candidates that it had recruited. Given that it had provided pay slips for a number of employees, signed staff handbooks, identification and a phone bill, it believed that it had



provided sufficient evidence to demonstrate that it had recruited certain candidates. It acknowledged that it had not been able to provide documentation for every member of staff that had been employed and explained that it did not always retain documentation for each and every member of staff as many were not permanent and did not stay long. It stated that it had contracts of employment for each member of staff but it had not understood that it was required to provide them. It had subsequently asked former employees to provide their details but many had refused and it believed this was due to the reputation that the Level 2 provider had obtained from third party forums.

The Level 2 provider accepted that it had not provided the Executive with any evidence that successful candidates who had obtained employment with the Level 2 provider had been refunded the cost of their call to the Service. The Level 2 provider stated that regrettably it had not been able to obtain the evidence.

3. The Tribunal considered the Code, the Guidance and all the evidence before it, including the Level 2 provider's written and oral submissions. The Tribunal noted that the Level 2 provider had supplied inconsistent and conflicting accounts in its responses to the Executive's requests for information which had caused confusion and some delay in the Executive's investigation into the Service. In particular, the Tribunal noted that the Level 2 provider had provided additional information during its oral submissions that had not previously been stated in its written responses. It noted that the Level 2 provider had repeatedly stated in correspondence that the purpose of the Service was to recruit candidates for internal vacancies within its organisation, yet during its oral submissions the Level 2 provider had stated that the same premium rate numbers had been used to provide candidates with training and recruitment advice and, it had also gathered consumers' information in the hope that it may be able to place candidates in positions within third party employers in the future, in furtherance of its desire to set up a recruitment consultancy business.

In making its determination, the Tribunal considered all the complainants accounts and the evidence provided by the complainants, which it found was consistent and credible.

The Tribunal noted the Executive's assertion that on the basis of the evidence provided no jobs existed but the Tribunal did not accept this assertion. It was satisfied on the evidence provided by the Level 2 provider that it had positions available within its own company. However, the Tribunal commented that the information provided to consumers about the jobs that were on offer was inaccurate. The Tribunal found that consumers were misled by the Service, as a result of the following:

- Consumers were given the impression that the Level 2 provider was recruiting for external positions for other third party companies, when at the time the Level 2 provider was not recruiting for a specific vacancy within a third party company;
- Consumers were provided with inaccurate information about the location of the jobs available;
- Consumers were provided with inaccurate information about the salary of the role they were applying for;
- Consumers were not informed about the nature of the job they were applying for. For example, the Level 2 provider admitted in its oral submissions that consumers were required to work an unpaid probationary period for at least three to five days and the available positions were temporary.

The Tribunal was satisfied that the jobs consumers thought they were applying for were not genuine and although the Level 2 provider had vacancies within its own company, consumers



were not provided with full and accurate information about the vacancies that were available. Accordingly consumers interacted with the Service having been given inaccurate information about the jobs on offer.

Further, the Tribunal commented that it had concerns about the Level 2 provider's business model, as the main purpose of the Service was the recruitment of job seekers, who would be employed by the Level 2 provider for a short period of time to attract other job seekers to engage with the Service. This was not made clear to consumers and accordingly consumers were misled about the real nature of the Service.

As a result, the Tribunal found that the Service and its promotions misled consumers about the jobs that were on offer for the reasons detailed above. Accordingly, the Tribunal upheld a breach of rule 2.3.2 of the Code.

Decision: UPHELD

ALLEGED BREACH 2

Rule 2.1.1

"Premium rate services must comply with the law."

1. The Executive submitted that the Level 2 provider had breached rule 2.1.1 of the Code as consumers had been charged a fee for the Service by way of a premium rate charge and the Service sought to find employment for consumers, contrary to section 6 (1) of the Employment Agencies Act 1973 (the "**Act**"). It raised this breach in the alternative to reason one of the breach of rule 2.3.2 of the Code.

Section 6 of the Act states:

"Restriction on charging persons seeking employment, etc

- (1) Except in such cases or classes of case as the Secretary of State may prescribe, a person carrying on an employment agency or an employment business shall not demand or directly or indirectly receive from any person any fee for finding him employment or for seeking to find him employment."

Section 13 of the Act defines an "employment agency" and an "employment business" as:

- (2) For the purposes of this Act "employment agency" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them.
- (3) For the purpose of this Act "employment business" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, under the control of, other persons in any capacity."

Guidance

The Executive noted the content of the PhonepayPlus Guidance on "Employment, employment information or business opportunity services" (the "**Guidance**"). The Guidance states:



“Types of employment services

These services fall into four categories, all of which carry different expectations:

- Services offered by employment agencies and employment businesses subject to the exception in point 4 below, no charge can be applied to a service which finds, or seeks to find, employment for persons. If providers are found to be charging premium rates to such services, they are likely to be found in breach of paragraph 2.1 of the Code of Practice.
- Services which give general advice about careers and employment, including self-employment. These services can apply premium rate charges, but will be subject to PhonepayPlus Code of Practice. Those providing advice should also see Service-Specific Guidance on Advice services.
- Services which give information about the providers own vacancies
These services can apply premium rate charges, but will be subject to PhonepayPlus Code of Practice
- Services which seek to find work for performers and certain other workers in the entertainment field (except photographic and fashion models)
These services can charge for their services to work-seekers in respect of the occupations listed in Schedule 3 to the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended by the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010) (“the regulations”), subject to various limitations and requirements set out in the Regulations. Providers should note that the use of PRS is likely to breach the Regulations where it takes the form of ‘up-front’ costs, unless the PRS charges relate directly to the entry of work-seekers into a job seeker or job search publication and various other requirements are satisfied, including the provision of a cooling off period. Providers are strongly advised to refer to the Regulations for further information, and seek legal advice accordingly.”

As outlined in the Executive’s case under the breach of rule 2.3.2 of the Code, in response to directions for information the Level 2 provider stated that the purpose of the Service was to enable consumers to apply for a job within its company. In particular, the Executive noted that the Level 2 provider had stated during correspondence that:

“There is no clients in question as at the time we were only hiring for our own company. Their [sic] has been no advise [sic] that we have placed our staff with clients, all our ads with the above premium number was for our own company vacancy Bkings telecommunications. These staff had been hired directly with Bkings telecommunications to fill vacant position that we had available at the time.”

The Executive noted that consumers were charged between 61p and £1.53 per minute depending on the 090 number that was called. Accordingly, the Executive submitted that the Level 2 provider had received a fee for finding or seeking to find consumers employment.

The Executive noted that the Level 2 provider had stated that the Service operated to fill positions within its own company and was not seeking to find candidates external jobs. However, as detailed in the Executive’s case under the breach of rule 2.3.2 the following evidence indicated that the Level 2 provider may be recruiting for external positions:



- The job specifications received by complainants referred to positions being available for “our client”;
- The locations of the jobs advertised suggested that there were positions available at locations other than the Level 2 provider’s place of work; and
- The Level 2 provider’s website stated it was “...a executive human capital recruitment consultant company specializing in senior level executive search and recruitment”.

Notwithstanding whether the job vacancies were for positions within the Level 2 provider or for external companies, the Executive submitted that it was illegal for the Level 2 provider to receive a fee for finding job seekers work. The Executive noted the content of the Guidance but asserted that the law (as set out in the Act) made it clear that a business (whether or not carried on in conjunction with any other business) providing services for the purposes of finding consumers employment shall not receive a fee from consumers for that purpose.

Accordingly, the Executive submitted that the Service has not complied with the law and a breach of rule 2.1.1 of the Code had occurred.

2. During the Level 2 provider’s oral submissions it accepted that it had breached rule 2.1.1 of the Code.

The Level 2 provider stated that it had changed its name from “BKings Telecommunications Limited” to “BKings Group Limited” because it thought that this name was more appropriate. The Level 2 provider stated the name change was evidence of another step that it had taken to ensure that consumers were not misled. The Level 2 provider stated that it had followed the correct protocol to change its name and the legal documentation had been appropriately completed. As evidence, the Level 2 provider supplied a copy of the name change document issued by Companies House.

During informal representations, the Level 2 provider stated that it understood from reading the PhonepayPlus Guidance that it was permitted to use premium rate numbers to find job seekers work for positions within its own company and therefore it believed that the Service was fully compliant with the Code.

3. The Tribunal considered the Code, Guidance and all the evidence before it, including the Level 2 provider’s written and oral submissions. In addition, the Tribunal carefully considered the relevant sections of the Act.

The Tribunal noted that the Level 2 provider operated the Service to recruit staff for its own job vacancies. The Tribunal was not satisfied that this fell within the scope of section 6 of the Act. It was of the view, that in line with the Guidance, the Level 2 provider was entitled to charge consumers a fee to provide information about its own vacancies.

Notwithstanding that the Level 2 provider had originally stated in correspondence that it had only intended to recruit staff for its own job vacancies, during its informal representations, the Level 2 provider accepted that the Service was also used to provide job training and advice to job seekers and that information about job seekers was collated with the intention of finding them work with third parties in the future. The Tribunal noted that the Level 2 provider had accepted that it did not have a contract with a third party for the provision of candidates but it had made modifications and adjustments to the style and marketing of its business model to find candidates work with third parties and it had actively pitched its services to third party employers. The Tribunal concluded that giving consumers the impression that the Level 2 provider had external vacancies and enticing them to engage with the Service to find them work



with third party employers was sufficient for the Service to be deemed an employment agency under section 13 of the Act. Accordingly, the Level 2 provider was an employment agency and was prohibited from receiving a fee (via a premium rate charge) for finding or seeking to find consumers employment. The Tribunal concluded that the Level 2 provider had not complied with the law and a breach of rule 2.1.1 of the Code had occurred.

Decision: UPHELD**ALLEGED BREACH 3****Rule 2.2.1 (a)**

“Consumers of premium rate services must be fully and clearly informed of all information likely to influence the decision to purchase, including the cost, before any purchase is made

(a) Promotional material must contain the name (or brand if part of the name) and the non-premium rate UK contact telephone number of the Level 2 provider of the relevant premium rate service except where otherwise obvious.”

1. The Executive submitted that the Level 2 provider had acted in breach of rule 2.2.1(a) of the Code as consumers were not fully and clearly informed of all information likely to influence their decision to purchase, before incurring charges. The Executive asserted that the following information was absent from the promotional email sent to consumers:

- The cost of the Service;
- The Level 2 provider’s identity; and
- The non-premium rate UK contact telephone number

Guidance

The Executive relied on the content of PhonepayPlus Guidance on “Promotions and promotional material” (the “Guidance”), which states:

“Paragraph 1.3

...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:

- The total cost of the service, including price per minute and/or text, and any initial charges (such as a joining fee);
- The name and customer service contact number of the provider (which should be the full name, or any abbreviation that could be found on the first page of an internet search engine);
- Whether the service bills by subscription - i.e. carries a repeat charge which ends only upon termination by the consumer.”

Complaints

The Executive relied on the content of all the complaints. In addition to the complaints outlined in the “Background” section, the Executive noted that the following complaints indicated that consumers were unaware that they had interacted with a premium rate service and/or were unaware of the cost of the Service.



"I have received a phone call from BKK saying that they cannot reimburse me the about £107 phone bill that I incurred. They say they do not need to do so because at the beginning of the phone message there was a warning about the cost. I think this is unfair because the e-mail inviting me to interview referred to a main number. I mistook this to be a landline number. However, I think the reference to a main line number was misleading. I do not think it is fair, in the stress of the moments leading to a telephone interview that new information is "sprung" on me. I cannot afford to lose about £107."

"Consumer called the number on her mobile phone consumer received a phone call from the company saying they saw her cv and they wanted to interview her "they said that they saw my cv and it looks promising to them and they wanted to do a phone interview with me but i had to call on the main office number and they just gave me the 09 number" Consumer saying that they did not say that she was going to be charged to call the 09 number, they said it was there main office number and she had to call it £81.72 - consumer has been charged In the phone call they asked normal interview questions "i thought to my self [sic] that she was asking me alot of questions" Once the call ended consumer contact virgin straight away who told her how much she has been charged consumer has reported it to the police who are saying its [sic] a scam."

The Executive noted that the emails provided by some of the complainants were identical save for the name of the recipient, date and time of the telephone interview, the premium rate number and the name of the sender and their company, which sometimes appeared as "BktRecruitment", "BktRecruitment" or "BKings Telecommunications Limited". These emails did not contain any pricing information for the Service.

During the course of the investigation, the Level 2 provider supplied the Executive with copy of the email template that it stated would have been sent to consumers, which states:

"Dear
Many thanks for sending across your C.V. and showing an interest in our recruitment consultancy programme. It was lovely speaking with you today, we have taken the time to review your C.V. and are pleased to inform that you have been short listed for the programme and if successful a position within our company, as we feel the information provided meets our criteria.

I can confirm you have been booked in for a telephone interview on Friday 30th May at 13.05pm.

Please contact us on our main office line promptly at interview time given on 09131260037 to conduct the interview.

(Please note by calling our office number it is charged at £1.43per minute plus network extra you must be over the age of 18 to call our number and have the bill payer's permission)

Please kindly reply to this email to confirm you accept the programme. I wish you all the best of luck with you application.

Kind Regards

Bkt Recruitment | Your Global Recruitment Group



Tel: 0)91 312 60XXX ext XXX
Website: www.bkt-recruitment.com
Email: human_resources@bktassistance.com”

The Executive noted that the cost of the Service was not included in any of the emails received by the complainants. As the email contained the premium rate number and therefore the means of access to the Service, the Executive submitted that it should have contained the cost of the Service to ensure that consumers were fully and clearly informed of all information likely to influence their decision to purchase, before any purchase was made.

The Executive noted that the email template supplied by the Level 2 provider contained pricing information but based on the consistent evidence provided by complainants, the Executive submitted that, on the balance of probabilities, the email promotions for the Service did not contain the cost of the Service and consumers were not fully and clearly informed of all information likely to influence their decision to purchase, before any purchase was made.

The Executive noted that the emails received by some complainants and the email template provided by the Level 2 provider only contained the trading name “BKT Recruitment” and not the name of the Level 2 provider. In addition, none of the email promotions contained a non-premium rate UK contact telephone number for the Level 2 provider.

The Executive submitted that the Level 2 provider acted in breach of rule 2.2.1 (a) of the Code as the email promotions for the Service did not contain the cost of the Service, the identity of the Level 2 provider and a non-premium rate UK contact telephone number.

2. The Level 2 provider stated that it partially accepted that a breach of rule 2.2.1(a) of the Code had occurred and stated that it accepted that it should have increased the boldness of the cost of the Service. However, it submitted that it had subsequently taken steps to remedy the breach.

During informal representations, the Level 2 provider reiterated its written submissions. In addition, it accepted that in hindsight the cost of the Service was not always clear in the emails that were sent to consumers but it submitted that the cost of the Service was always clearly stated on an interactive voice recording (“IVR”) at the beginning of a call to the Service.

In relation to compliance advice previously given to the Level 2 provider regarding the display of pricing information (amongst other matters), it stated that the advice was given to the Level 2 provider in relation to another service which was very different.

3. The Tribunal considered the Code, Guidance and all the evidence before it, including the Level 2 provider's written submissions and oral clarification.

The Tribunal commented that the premium rate nature of the Service was not clear from the promotional emails that were sent to consumers and referring to the premium rate number as the “main office line” contributed to consumer's misunderstanding that they would be interacting with a premium rate service. Further, given that the Level 2 provider was promoting to consumers, some of which were likely to have been unemployed, it was particularly important that the cost of the Service was made extremely clear.

The Tribunal did not accept that the complainants had tampered with the evidence. A number of complainants had provided copies of emails they had received, which clearly demonstrated that the cost of the Service was not included. The Tribunal commented that the Code and



Guidance was clear that pricing information must be provided before a purchase was made and only providing pricing information on an IVR at the commencement of the call when the consumer was already incurring charges was not sufficient.

The Tribunal found that the Level 2 provider's identity and the non-premium rate contact number was not always included in the promotional emails which is a clear Code requirement and vital for ensuring that a consumer can contact the provider of the Service if required.

Accordingly, the Tribunal concluded that consumers had not been fully and clearly informed of all information likely to influence their decision to purchase.

Decision: UPHELD

ALLEGED BREACH 4

Paragraph 3.4.12(a)

"The Level 2 providers must provide to PhonepayPlus relevant details (including any relevant access or other codes) to identify services to consumers and must provide the identity of any level 1 providers concerned with the provision of the service."

1. The Executive submitted that the Level 2 provider had acted in breach of paragraph 3.4.12(a) of the Code as the Service operated on the premium rate numbers 09022450014, 09070670018, 09131260019, 09131260018, 09131300178, 09131260037 and 09022450014 and the numbers were not registered with PhonepayPlus.

The Code requires that Level 2 providers supply relevant details to identify services to consumers. The PhonepayPlus Registration Scheme is in place to facilitate providers supplying relevant details to identify their services to consumers. Once a provider has supplied details of its services, including which premium rate numbers it operates on, the details then appear on the "Number Checker" section of the PhonepayPlus website, www.phonepayplus.org.uk. The Number Checker allows consumers to enter a phone number they may not recognise on their phone bill, and find out information regarding that number.

On the 9 September 2014, the Executive conducted a search of the premium rate numbers used by the Service and found that while some of the premium rate numbers used by the Service were registered with PhonepayPlus, some numbers were not registered.

The Executive submitted that where services are not registered, consumers do not have the ability to access information relating to the services, which impairs PhonepayPlus' regulatory function.

The Executive obtained revenue information from the Level 2 provider and confirmation from the Network operator, which demonstrated that the premium rate numbers were generating revenue and operational.

The Executive submitted that the Level 2 provider acted in breach of paragraph 3.4.12(a) of the Code as the Service was operating using premium rate numbers which the Level 2 provider had not registered with PhonepayPlus.

2. The Level 2 provider stated that it accepted that a breach of paragraph 3.4.12(a) had occurred and that all numbers should have been registered at the same time instead of within a staggered time frame.



3. The Tribunal considered the evidence, including the Level 2 provider's admission. The Tribunal recognised that the Level 2 provider had registered some of the numbers that it used to operate the Service. However, seven numbers had not been registered with PhonepayPlus, when they should have been registered prior to becoming operational. Accordingly, the Tribunal upheld a breach of paragraph 3.4.12(a) of the Code.

Decision: UPHELD

SANCTIONS

Initial overall assessment

The Tribunal's initial assessment of the breaches of the Code was as follows:

Rule 2.3.2 - Misleading

The initial assessment of rule 2.3.2 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- Serious cases have had a clear detrimental impact, directly or indirectly, on consumers and the breaches have a clear and damaging impact or potential impact on consumers.
- The nature of the breach means the Service would have damaged consumer confidence in premium rate services.
- The cost incurred by consumers was higher as a result of the breach of the Code.
- The Service has been operated in such a way that demonstrates a degree of reckless non-compliance with the Code.

Rule 2.1.1 - Legality

The initial assessment of rule 2.1.1 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The cost incurred by consumers was higher as a result of the breach of the Code.
- The law was clearly designed to protect job seekers and any breach is a matter that must be treated seriously.

Rule 2.2.1 (a) – Provision of information

The initial assessment of rule 2.2.1 (a) of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- Consumers may not have entered the Service if the promotional material had included key information including the cost of the Service.

Paragraph 3.4.12 (a) – Registration of numbers

The initial assessment of paragraph 3.4.12(a) of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The Level 2 provider unreasonably failed to register numbers with PhonepayPlus and despite being made aware of the issue, the numbers had not been registered.



The Tribunal's initial assessment was that, overall, the breach was **serious**.

Final overall assessment

In determining the final overall assessment for the case, the Tribunal took into account the following two aggravating factors:

- There have been numerous prior adjudications published concerning misleading promotions, the requirement for clear pricing information before a purchase is made and the registration of numbers with PhonepayPlus. In addition, the Level 2 provider had previously been advised by the Executive, in respect of another service, of the requirement for prominent pricing information and the inclusion of a non-premium rate number in promotional material.
- The Executive notified the Level 2 provider about its concerns regarding the Service on 30 May 2014 but the Service continued to operate in a non-compliant manner.

The Tribunal did not find any mitigating factors. The Tribunal noted that the Level 2 provider had sought to remedy the non-compliance with the Code but the Tribunal was not satisfied that the breaches of the Code had been remedied.

The Level 2 provider's revenue in relation to the Service was in the range of Band 5 (£50,000 - £99,999).

Having taken into account the aggravating factors, the Tribunal concluded that the seriousness of the case should be regarded overall as **serious**.

Sanctions imposed

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

- a formal reprimand;
- a requirement that the Level 2 provider seek compliance advice for the Service and any other services that it operates within two weeks of the date of publication of this decision and thereafter implement that advice within two weeks (subject to any extension of time agreed with PhonepayPlus) to the satisfaction of PhonepayPlus;
- a fine of £40,000;
- 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 PhonepayPlus that such refunds have been made.

Administrative charge imposed:

100%

Appendices

Appendix A – A job specification received by a complainant:

Customer Adviser

Location: Essex , London , Surrey Salary: £18,000-£22,000 per annum
Hours- (based on 40 hours Mon - Fri) -9am-6pm Job type: Permanent
Full and Part time
Job reference: BKT

Our client, is looking for a Customer Adviser.

Job Introduction

If you are brilliant with people and have an enquiring mind you have the opportunity to join something special. Our client is looking for someone to join their team.

Main responsibilities

As a Customer Adviser, you'll be engaging in conversations and providing information to customers on the full range of financial products and services offered. By really listening to and getting to know their customers you'll help them to review their circumstances and pro actively identify the most appropriate products to suit their needs, all the while providing a straightforward, helpful service that lets your enthusiasm shine through. As it is a friendly working environment, you'll play an important part in making the most of every conversation with every customer, face-to-face or over the phone. So, whether you're promoting a new product or resolving a problem, you'll always place our customers' needs at the heart of everything you do and provide a first-class service every time.

What qualities are we looking for?

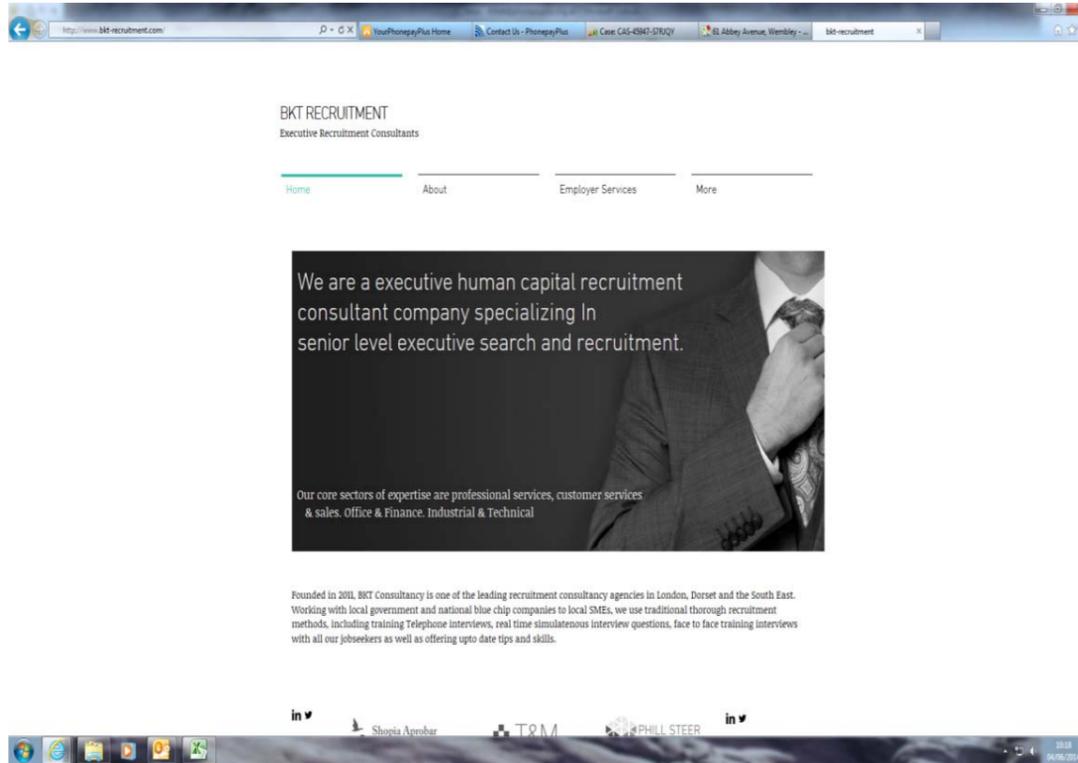
- Being really passionate about delivering exceptional customer service
- Enjoy meeting new people
- Great listening skills
- Excellent team work skills
- Good attention to detail
- Excellent verbal and written communication skills
- Energised by a fast paced varied and demanding working environment
- Having a good level of organisational skills

Appendix B – A screenshot of the Level 2 provider's website www.bkingstelecommunications.com:





Appendix C – A screenshot of the Level 2 provider’s website www.bkt-recruitment.com (above the fold):



Appendix D – A screenshot of the Level 2 provider’s website www.bktrecruitment.com (below the fold):

