



Tribunal meeting number 169 / Case 1

Case reference: 57739
Level 2 provider: Blue Triangle Technology Ltd (UK)
Type of service: Loanster Money UK customer service helpline
Level 1 provider: N/A
Network operator: Numbers Plus Limited (UK)

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

BACKGROUND

Between 18 November 2014 and 26 January 2015, the Executive received 71 complaints (55 of which were referred to the Executive by Ofcom) concerning the Loanster Money UK premium rate customer helpline (the “**Service**”). The Service was operated by Blue Triangle Technology Ltd (the “**Level 2 provider**”) on the fixed line premium rate number 09131050149 (the “**PRN**”). The PRN had been allocated to the Level 2 provider by the Network operator Numbers Plus Limited (the “**Network operator**”).

Complainants routinely stated that they received silent and missed calls. Complainants were concerned that the reason for these calls was to encourage consumers to call back to generate income for the Service.

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 29 May 2015. Within the breach letter the Executive raised the following alleged breaches of the Code:

- Rule 2.3.2 – Misleading;
- Rule 2.3.1 – Fair and equitable treatment; and
- Paragraph 3.4.12(a) – Registration of a number.

The Level 2 provider responded on 12 June 2015. On 25 June 2015 the Tribunal reached a decision on the breaches raised by the Executive.

The Tribunal considered the following evidence in full:

- The complainants’ accounts;
- Correspondence between the Executive and the Level 2 provider (including directions for information and the Level 2 provider’s responses including supporting documentation);
- Internet forum complaints about the PRN;
- Screenshots from Number Checker;
- Screenshots from internet archive services, and company registry information;
- The breach letter of 29 May 2015 and the Level 2 provider’s response of 12 June 2015, including the attached documentation; and
- An email sent to the Executive by the Level 2 provider dated 21 June 2015 making an allegation of identity theft.



The Service

The Level 2 provider stated that the Service was not actively promoted, but the PRN was provided to consumers via the Loanster Money UK website. Calls to the Service were charged at £1.02 per minute.

The Service was not registered with PhonepayPlus.

In response to the Executive's request for information dated 11 February 2015 regarding the Service and how it was operated and promoted, the Level 2 provider stated:

"We offer a service to B2C audience in UNITED KINGDOM, Where the customer becomes a member of our website, and gets access to Lenders all across the UK with options for all kinds of cases in different circumstances.

Once the customer registers, we understand his requirement and his financial health and depending on the same we charge a onetime WEBSITE ACCESS FEE, VIA which the customer will be able to access the website for the next six months, and use all the features available on the same.

We do not make any promises that we cannot full fill such as, assurance that you will get a loan no matter what, committing to generic interest rates APR. (Our Advisors do not make promises from their side, all we do is direct their application to the respective lender.)

The PRN is utilised for our specialised customer service panel which monitors our daily feed of incoming consumer queries which are of high importance." [sic]

In addition to the above, the Level 2 provider stated the following regarding the intended use of the Service:

"Consumers call us in for their highly important queries for which we have set-up this customer service panel. We receive huge traffic to our toll free and low tariff numbers due to which we at times are unable to resolve highly important consumer queries henceforth to avoid any miscommunication between our company and our consumers we use PRN's which remain exclusive to our customer service panel so that no inquiry of ours goes neglected."

"While promoting our product we share the number with consumers as a high importance number which needs to be contcted [sic] only if they are unable to contact us on our low tariff or toll free numbers and they feel the need for their case to be considered exclusive. We do not ask the consumers to call us back as this will lead to their misguidance instead we share the PRNs to bridge the communication gaps. We have a simple policy in this regard and we do not see huge traffic on the PRNs allocated to us due to the same reason." [sic]

The Level 2 provider stated that it started using the PRN on 1 September 2014.

The Executive was unable to monitor the Service as it was discontinued in January 2015.

When asked to provide details of call volumes to the Service, the Level 2 provider supplied the following information:



Month	No. of Calls	Total Revenue (GBP) (0.72 GBP/minute)	Service Provider Revenue Share (0.78/minute)	Total (1.5 GBP/minute)
April	0	0	0	0
May	0	0	0	0
June	0	0	0	0
July	0	0	0	0
August	0	0	0	0
September	1	0.072	0.078	0.15
October	2	2.2874	2.47	4.755
November	3591	2177.28	2359.28	4357.08
December	13456	2164.32	2164.94	4510.23
January	3544	472.43	511.96	984.225

Subsequently the Level 2 provider was asked to supply details of call volumes to its free and low cost phone lines. A total of 35,750 calls were made to the Level 2 provider between September 2014 and January 2015. The Executive noted that, out of the 35,750 calls made to the Level 2 provider during this period:

- 41.2% were made to their free phone numbers (2477360000 and 2477360001);
- 1.2% were made to their low cost number (08725470616); and
- 57.6% were made to the premium rate number (09131050149).

The Level 2 provider had stated that the Service was provided to its customers as a means of contacting it when its free and low cost customer service lines were too busy. The Level 2 provider had said that it “receive[s] huge traffic to our toll free and low tariff numbers” and “we do not see huge traffic on the PRNs allocated to us”.

The Executive submitted that the Service did not operate in the way in which the Level 2 provider described, as it was clear that the majority of incoming calls went to the PRN rather than the free and low cost numbers.

Complaints

The Executive had received 71 complaints, which were made up of 16 complaints received directly by PhonepayPlus and an additional 55 complaints referred to the Executive from Ofcom. The main complaint period was between November 2014 and January 2015. Complainants routinely stated that they received silent and missed calls.

Extracts from a sample of complainants can be found below:

“These persons keep miss calling and hanging up the phone if u answer. Its like they want you to call them bck to generate income for them.

“No content just being called by them about a dozen times a day. I realized it was a scam the first time i called the number bck n got auto msg saying i was being charged £1.05 per min. I can see a lot of vulnerable people getting scammed by them. They are calling numerous times in the day n hang up if u answer” [sic]

“Persistent calls from above 0913 number. We have asked to be removed from their database. Some calls are silent - we have not returned the calls.

Even though we have asked to have our number removed we still keep getting calls and silent calls - obviously want us to call them back on their £1/min number. We have also spoken to the network provider - Numbers Plus to highlight the problem.”



In addition to the complaints received by the Executive, the Executive found numerous complaints regarding the PRN and 02477360000 number associated with the Level 2 provider on internet forums.

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 acted in breach of rule 2.3.2 of the Code as consumers were misled into engaging with the Service as a result of receiving missed and silent calls which appeared to come from the premium rate number 09131050149.

Of the 16 complaints received directly by the Executive, two complainants indicated that they had returned the call from the Service. Of the 55 complaints received from Ofcom, eight of the complainants indicated that they had returned the call from the Service. In addition to the complaints cited in the Background section, the Executive relied on the following example of a complaint received:

“consumer saying he has been getting missed calls from 09131050149. Consumer saying he did call the number once and there was a automated message saying that he will be charged, but then did not put him through to no one” [sic]

These complaints highlighted that the recipients of the telephone calls only dialled the PRN to return a missed call.

The Executive contacted the Network operator to seek information in relation to the Service number. The Network operator stated:

“The service platform we provide is for inbound calls only. It is not possible for an outbound call to be made through our service that presents a premium number as the call ID.”

The Executive asked the Network operator if it was possible for the Level 2 provider to change the presentation of the Caller Line Identification (“**CLI**”). The Network operator stated:

“It could be possible. We do not provide their outbound call services. I can contact them and check to see if they are making outbound calls to clients presenting their PRS number.”

The Network operator then supplied the following information to the Executive:

“[name redacted] at Blue Triangle has come back to me and is unaware of any outbound calls being made from his call centre presenting the PRS number. It has not been authorised and he is looking in to the matter. They do use third party agents for customer calls and it might be that one of them is ill-advisedly presenting the PRS. Their call centre deals with mostly inbound calls and any outbound calls made would normally present a withheld number. He is aware of his obligations under The Code of Practice and will ensure that all agents are aware of the policy.” [sic]

In response to the Executive’s enquiries, the Level 2 provider stated that it believed it had been the victim of fraud or mischief in relation to the outbound calls which have the Service PRN as a CLI. The Executive asked the Level 2 provider to supply details of any investigation it had conducted (together with documentary evidence) in relation to the alleged misuse of the Service number and steps it had taken to prevent this use. The Level 2 provider responded stating:



“Unfortunately, we do not have any evidence in this regard. We sought help from the service provider but couldn’t come up with the desired conclusions as we were assured that we have no business with the PRN from then onwards.”

In an email received by the Executive on 11 March 2015, the Level 2 provider claimed that it had been a victim of identity theft. It alleged that a separate company (the “**Third Party**”) had been continuously contacting consumers using the Level 2 provider’s company credentials.

In response to this, the Executive asked the Level 2 provider for specific further details of the alleged identity theft. In relation to the information requested:

- The Level 2 provider was unable to provide details of who owned the Third Party website;
- The Level 2 provider was unsure as to when its company credentials had first been used by the third party, but stated that it was first informed on 5 March 2015 through a consumer complaint;
- The Level 2 provider supplied an email from a consumer complaining he had been receiving calls that he believed originated from the Level 2 provider; and
- The Level 2 provider stated the name of the individual under which the Third Party website had been registered.

In addition to the above, the Executive asked the Level 2 provider to supply details of any report made by it to the authorities in relation to the alleged third party. The Level 2 provider did not provide any information in relation to this.

The Executive captured screenshots for the Third Party website using an internet archive service. Using that service, the Executive reviewed how the Third Party’s landing page appeared on 17 December 2014. The information provided on the website on this date indicated that it was owned and operated by another company (“**the Website Owner**”).

The Executive used an online directory which tracks changes made to websites to establish when the Third Party website adopted Loanster Money UK’s company credentials. Using that service, the Executive found that changes were made to the Third Party website on 12 February 2015. Details relating to the Website Owner had been removed from the Third Party website and replaced with those relating to Loanster Money UK. The Executive noted that these changes significantly postdated both the beginning of the missed call campaign and the Executive’s investigation into the Level 2 provider. The Executive submitted that there was also no evidential link between the website and the preceding missed call campaign.

The Executive also submitted that, using the internet archive service, it had established that as at 24 July 2013, the Loanster Money UK website tried to connect to a website address associated with the Website Owner when an “APPLY NOW” button was pressed.

The Executive noted that the alleged identity theft took place subsequent to the missed/silent calls issue and the two appeared to be unrelated. Furthermore, the Executive asserted that there was a link between the operators of the Loanster Money UK website and the Third Party website, which predated the missed call campaign. The Executive noted that the directors of the Level 2 provider and the Website Owner were both directors of another company registered in India since 12 September 2011.

Regarding promotion of the Service, the Executive noted that the Level 2 provider had stated that it did not promote the Service via calls, emails or text messages.



The Executive noted that those consumers who did not pick up the initial call received a missed call with the CLI displayed on their handset or on their “last known caller” system (“1471” on a landline). Those consumers who answered the call but only encountered “silence” would have been able to gain access to the number in a similar fashion. The Executive submitted that the footprint left behind as a result of the missed/silent calls provided an access point to which the consumer could engage with the Service. Accordingly, the Executive asserted that the missed and silent calls had the effect of promoting the Service in accordance with the definition of “promotion” under paragraph 5.3.29 of the Code, which states:

“‘Promotion’ means anything where the intent or effect is, either directly or indirectly, to encourage the use of premium rate services, and the term ‘promotional material’ shall be construed accordingly”.

The Executive asserted that it was unlikely that an unconnected third party would be inclined to promote the Level 2 provider’s PRN by leaving a missed call with the PRN as a CLI. The Executive asserted that this was because there would be no financial gain for the third party as the proceeds from the Service went to the Level 2 provider rather than the third party. In the absence of credible evidence to the contrary, the Executive submitted that the calls to consumers with the PRN CLI were made by the Level 2 provider or agents acting on its behalf.

In response to questioning by the Tribunal, the Executive was unable to confirm whether the Level 2 provider generated most of its income through commission for loans or PRN revenue, but was aware that the Level 2 provider charged consumers a fee upon registration with it. The Executive was unable to confirm whether the Level 2 provider remained involved with the consumers after a loan was obtained. The Executive was unable to confirm whether the Service had been an information connection and/or signposting service. The Executive confirmed that it had not investigated to establish if there were any issues with the underlying loan brokerage service, as it had not received complaints about this. The Executive was aware that some complaints found on internet forums had raised other issues. The Executive was aware that the Financial Conduct Authority (“**FCA**”) had a jurisdiction in relation to brokerage services.

In response to questioning by the Tribunal, the Executive confirmed that its understanding was that the Network Operator had stated that the Level 2 provider could not technically make outbound calls using the PRN, however the Executive understood it was technically possible for the Level 2 provider to make outbound calls using another line which presented the CLI of the PRN to the call recipient.

In response to questioning by the Tribunal, the Executive submitted that if a malicious third party had been trying to negatively affect the Level 2 provider’s reputation, then missed calls or silent calls would not be an effective way of doing this as the call did not necessarily lead back to the Level 2 provider’s brand. The response to the missed or silent calls also generated income for the Level 2 provider.

In response to questioning by the Tribunal, the Executive submitted that there was no credible evidence which showed that the promotion of the Service by missed or silent calls was attributable to an identity theft (whether as a result of responses to the Executive’s enquiries or as revealed during the investigation). The Executive noted that the allegation of identity theft was first made to it in March 2015, after the PRN had been terminated, though the Level 2 provider had argued that the missed calls and silent calls had been made by a third party from the outset. The Executive referred to its investigations into the Level 2 provider’s allegation. The Executive noted that the website was altered the day after a direction to supply information was made to the Level 2 provider. The Executive noted that the Level 2 provider addressed the connection between the director of the Website Owner and its own director only after this had been drawn to its attention by the Level 2 provider. The Executive submitted that



the Level 2 provider had not supplied the Executive with details of its investigations when asked to do so. The Executive submitted that the Level 2 provider should have been put on alert when it first started receiving unusual levels of traffic to the PRN. The Executive stated that it had not found evidence of hacking into the Level 2 provider's website.

The Executive asserted that the promotion of the Service through missed and silent calls was misleading as it encouraged consumers to call the Service either out of curiosity or under the belief that they were returning the call of someone who was trying to contact them, and without being aware that it was a premium rate number. The Executive accordingly submitted that for this reason the Service had been operated in breach of rule 2.3.2 of the Code and outcome 2.3 was not met.

2. The Level 2 provider denied the breach. The Level 2 provider accepted that the PRN was allocated to it. The Level 2 provider stated that from September 2014 to October 2014 there were no such complaints by any consumer of such misconduct.

The Level 2 provider stated that in September 2014 there was just one phone call, and in October 2014 there were just two calls which went unnoticed by it. The bulk of the calls and consumer complaints took place in November and December 2014 and January 2015.

The Level 2 provider asserted that its PRN was used without identity by another company, creating identity theft and fraud. The Level 2 provider asserted that if it was going to use its PRN in such a way then it would have done so as soon as the PRN was up and running in September 2014, and not waited until November 2014.

The Level 2 provider further stated that it had brought this identity theft and fraud to the knowledge of the Executive and the FCA and that it had stopped using the PRN since then. The Level 2 provider stated that it had since found that the Third Party was owned by a person who had been its business partner in an Indian incorporated company and had been using the PRN as their CLI. The Level 2 provider suggested that this had been done to jeopardise its name as there had been internal conflicts between them.

The Level 2 provider stated that the calls were not landing on its equipment but elsewhere, and as a consequence the traffic went initially unnoticed. The traffic was however later discovered, the Network operator was informed and the PRN was deactivated.

The Level 2 provider asserted that it could not be held responsible for such acts as it has never been a part of such phone scams. The Level 2 provider stated that it would always coordinate and cooperate with any form of investigation by the authorities.

3. The Tribunal considered the Code and all the evidence before it. The Tribunal noted that the Level 2 provider had made assertions that it had been a victim of identity theft, but the Tribunal found that the Level 2 provider had not provided any credible evidence to support its assertion that the promotion of the Service by missed or silent calls was attributable to an identity theft. The Tribunal noted the Executive's evidence, from an online directory which tracks changes made to websites, which had been obtained to establish when the Third Party website adopted Loanster Money UK's company credentials, which undermined significantly the Level 2 provider's assertions on identity theft. In particular, the Tribunal noted that changes were made to the Third Party website on 12 February 2015. Details relating to the Website Owner were removed from the Third Party website and replaced with those relating to Loanster Money UK. These changes significantly postdated both the beginning of the missed call campaign and the Executive's investigation into the Level 2 provider and were made within a day of the Executive's direction to provide information dated 11 February 2015. The Tribunal found that the missed calls were made by the Level 2 provider or persons acting on their behalf.



Accordingly, for the reasons stated by the Executive, the Tribunal upheld a breach of rule 2.3.2 of the Code.

Decision: UPHELD

ALLEGED BREACH 2

Rule 2.3.1

“Consumers of premium rate services must be treated fairly and equitably.”

1. Further or in the alternative, the Executive asserted that the Level 2 provider had acted in breach of rule 2.3.1 of the Code as it failed to take sufficient action to prevent consumer harm. As a result, consumers who engaged with the Service as a consequence of receiving missed or silent calls were not treated fairly and equitably.

The Executive asserted that the Level 2 provider failed to take sufficient action to prevent consumer harm for the following reasons:

1. The Level 2 provider did not give sufficient warning to consumers regarding the alleged issues affecting the Service number; and
2. The measures employed by the Level 2 provider to deal with the alleged misuse of its number did not prevent consumer harm from occurring.

The Executive submitted that, if the stated method of promotion of the Service (online) was the only method in fact authorised and used by the Level 2 provider, a responsible Level 2 provider would have taken immediate action to investigate upon becoming aware that call traffic to the Service PRN exceeded the call traffic to the low rate and free numbers provided for the same purpose, and would have taken adequate steps to prevent any consumer harm occurring.

The Executive noted that the Level 2 provider had stated that it was not the source of the outbound calls showing the PRN. In response to a request for information dated 9 December 2014, the Level 2 provider stated:

“...this is the result of the same fraud / mischief someone played on us, by using our number as their own CLI and the outcome was we were receiving these calls of people who are not our customers, and hence the result was these complaints as obviously when they are not our customers they have nothing to do with us and they will feel the pain when they receive bills of these calls.”

The Executive noted that the Level 2 provider had stated in response to the alleged fraud that was being committed, it issued emails and texts to all its customers. The Level 2 provider had stated the email informed the Level 2 provider’s customers of the following:

“Hi,

This is to notify that Loanster Money trading name is being misused by some unregistered company regarding which we do not have any specified information.

If you receive calls from Loanster Money asking you to pay upfront fee in the name of [redacted] please ignore such calls and report our support team immediately.

Thanks

Support Team
Loanster Money UK



support@loanstermoney.co.uk”

The Executive noted that the Level 2 provider did not highlight any issues regarding the specific ‘09’ number within its email, nor that they might receive a missed call from this number. The Executive asserted that it was likely that, in the absence of any warning in relation to the PRN, the Level 2 provider’s customers receiving a missed or silent call from the PRN could return the call and incur charges as a result.

The Executive captured screenshots for the Loanster Money UK website using an internet archive service (**Appendix A**). Using the service, the Executive was able to review how the Level 2 provider’s website appeared on 23 December 2014. At that time, the archive showed that a warning was displayed as a pop up on the website’s landing page.

The Executive noted that the warning displayed on the Level 2 provider’s website concerned another company and not the PRN for the Service. The Executive submitted that any existing customers of Loanster Money UK would be unaware of the alleged misuse of the PRN.

The Executive asserted that the action taken was also insufficient to warn any individuals who were not existing customers of the Level 2 provider, who were likely to form the majority of potential and actual complainants. The Executive would have expected a clear warning regarding the PRN, which included the number in full and advice to both existing customers and non-customers not to return missed or silent calls coming from the PRN.

The Level 2 provider had stated that, in response to consumer complaints, it had tried to have the 09 number terminated in November 2014:

“...in the month of November when we started receiving complaints we tried to get the PRN de-configured but somehow we could still see the call summary in our control panel, we sought help of the service provider who assured us that the PRN was deconfigured and we have got no business with the PRN, the service provider sought compliance on our behalf.”

Despite stating that it had tried to terminate the use of the PRN in November 2014, the Executive noted that the Level 2 provider continued to receive income from the number after November 2014. On 10 December 2014, the Level 2 provider indicated that the number was still in use. In outlining its proposed solution to the alleged misuse of the number, the Level 2 provider stated:

“...if we get a call on our customer care department i.e. our 91 number we first ask for customer reference number only then proceed with their queries otherwise we straight away refuse and ask them to disconnect the call, this is apart from that existing warning we have before the call connects to us.”

The Executive noted that the Level 2 provider did not appear to make further attempts to terminate the Service until January 2015. The Level 2 provider had supplied an email dated 12 January 2015 between it and the Network operator outlining the issue and requesting help. In response to the Level 2 provider's request for help, the Network operator advised that it had ceased inbound calls to the PRN.

The Executive asserted that the Level 2 provider’s decision to continue with the operation of the Service on the PRN being used at that time, despite the alleged mischief it was aware was being committed, caused harm to consumers.

In response to questioning by the Tribunal, the Executive confirmed that its understanding was that a number could be “deconfigured” almost immediately if this was required, subject to any contractual issues such as a notice period. The Executive was not aware of what



correspondence there had been with the Network operator about the PRN in the period from 5 December to 12 January 2015. The Executive confirmed that it had not provided the Level 2 provider with compliance advice.

For the reasons set out above, the Executive submitted that the Level 2 provider had acted in breach of rule 2.3.1 of the Code.

2. The Level 2 provider denied the breach. The Level 2 provider stated that as soon as it received the first email of 8 January 2015, it got the PRN deconfigured from the system. The Level 2 provider stated that until 8 January 2015 it was not aware that someone was misusing the PRN. The Level 2 provider stated that it found out about the identity theft and fraud in the month of March 2015, and it then informed the FCA and the Executive about this.

The Level 2 provider stated it had investigated and found out the details of the company using its credentials and numbers as their CLI. The Level 2 provider stated that it was the Third Party which was owned by its director's former partner. The Level 2 provider stated that immediately after it found out about the scam and fraud by this company, it investigated all at its workplace and further took all the appropriate steps and measures to ensure that no scam was being perpetrated by use of a false identity.

The Level 2 provider stated that it has always assured the Executive of its full cooperation and clearing the matter from the roots. The Level 2 provider stated that it has a policy of never fooling or cheating consumers and that it was committed to standing with all the investigating authorities and officers in all possible forms and ways to reach justice. The Level 2 provider asserted that it stood innocent of the charge.

3. The Tribunal considered the Code and all the evidence before it. The Tribunal noted that although the Level 2 provider had stated that it had deconfigured the PRN on 8 January 2015 upon becoming aware of the matter, it had been aware of the issue since 27 November 2014 at least. The Tribunal noted that the Level 2 provider had continued to receive income from the PRN despite stating that it had tried to deconfigure the PRN in November 2014. The Tribunal found that a responsible Level 2 provider would have taken adequate steps to avoid consumer harm in the circumstances, and the Tribunal was not satisfied that the Level 2 provider had done so. Accordingly, for both of the reasons stated by the Executive, the Tribunal upheld a breach of rule 2.3.1 of the Code.

Decision: UPHELD

ALLEGED BREACH 3

Paragraph 3.4.12(a)

“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 acted in breach of paragraph 3.4.12(a) of the Code as it failed to provide PhonepayPlus with relevant details to identify the Service to consumers, and failed to provide PhonepayPlus with the identity of any Network operator concerned with the provision of the Service. Such information is commonly provided to PhonepayPlus as part of the registration process, but the Level 2 provider had failed to register its Service with PhonepayPlus.

The Executive noted that the Level 2 provider was allocated the PRN in September 2014. The Level 2 provider used the Service number from September 2014 to January 2015. The Service number was not registered with PhonepayPlus either before or during the time it was in use by the Level 2 provider.



In response to questioning by the Tribunal, the Executive confirmed that the responsibility for registering the Service lay with the Level 2 provider and not the Network operator, although the Network operator may have had separate due diligence risk assessment and control obligations which required them to have regard to a Level 2 provider's registration.

The Executive submitted that the failure to provide the requisite information to PhonepayPlus by registering the Service number was a breach of paragraph 3.4.12(a) of the Code.

2. The Level 2 provider admitted the breach in part by accepting that the PRN was not registered with Number Checker, but further stated that it was not aware of the need to register premium rate numbers. The Level 2 provider asserted it was logical to not register the numbers on Number Checker in spite of having the information.

The Level 2 provider stated it had not previously dealt directly with PhonepayPlus and instead it has always dealt with the Network operator. The Level 2 provider asserted that it was innocent and had never been involved in any illegal acts or scams involving cheating and misguiding consumers.

3. The Tribunal considered the Code and all the evidence before it. The Tribunal noted that the Service number was not registered with PhonepayPlus either before or during the time it was in use by the Level 2 provider, and accordingly the Level 2 provider had failed to provide PhonepayPlus with relevant details as required. Accordingly, for the reason stated by the Executive, 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 **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

- The breach had a clear and highly detrimental impact, directly or indirectly, on consumers;
- The nature of the breach, and/or the scale of harm caused to consumers, was likely to severely damage consumer confidence in premium rate services; and
- The Service sought to generate revenue through an intentionally misleading promotion.

Rule 2.3.1 – Fair and equitable treatment

The initial assessment of rule 2.3.1 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 may be higher, and the Service had the potential to generate higher revenues as a result of the breach; and
- The Service had been operated in such a way that demonstrates a degree of recklessness or intention of non-compliance with the Code.



Paragraph 3.4.12(a) – Registration of a number

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 criteria:

- The nature of the breach means the Service would have damaged consumer confidence in premium rate services; and
- The Level 2 provider had unreasonably failed to register its numbers with PhonepayPlus at all.

The Tribunal's initial assessment was that, overall, the breaches were **very serious**.

Final overall assessment

In determining the final overall assessment for the case, the Tribunal did not find any aggravating or mitigating factors.

The Level 2 provider's evidenced revenue in relation to the Service was in the range of Band 7 (£1 - £4,999).

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

Sanctions imposed

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

- a formal reprimand;
- a fine of £20,000;
- 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 implements that advice within two weeks (subject to any extension of time agreed with PhonepayPlus) to the satisfaction of PhonepayPlus, for a period of 12 months from the date of publication of this decision;
- 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 recommendation:

100%



Appendix

Appendix A – A screenshot of the Loanster Money UK website using an internet archive service

