



Case reference: 96144
Case: Prohibition of an associated individual

THIS CASE WAS BROUGHT AGAINST THE ASSOCIATED INDIVIDUAL UNDER PARAGRAPH 4.8.8 OF THE CODE

BACKGROUND

i) Summary relating to Mr Yuwan Kant Bakhshi

The Tribunal was asked to consider imposing a prohibition against Mr Yuwan Kant Bakhshi pursuant to paragraph 4.8.3(g) of the 14th edition of the PhonepayPlus Code of Practice (the “**Code**”).

The case related to an adjudication against the Level 2 provider (the “**Level 2 provider**”) Blue Triangle Technology Ltd (3 March 2016, case reference: 87228), which concerned a breach of the sanctions imposed by an earlier Tribunal (25 June 2015, case reference 57739) and non-payment of the associated administrative charges. The case on 25 June 2015 concerned a customer service helpline operated under the name Loanster Money UK (the “**Service**”). Among other issues, consumers had receiving missed and silent calls which appeared to come from the premium rate number 09131050149 which had misled them into engaging with the Service.

On 3 March 2016, the Tribunal instructed the Executive to initiate the process which may lead to the prohibition of Mr Bakhshi pursuant to paragraph 4.8.2(g) of the 13th edition of the Code of Practice (then in force).

The Tribunal considered the following evidence in full:

- The Tribunal decision against the Level 2 provider dated 25 June 2015;
- The Tribunal decision against the Level 2 provider dated 3 March 2016;
- A CreditSafe report for the Level 2 provider dated 15 August 2016;
- A gateway agreement and service checklist agreement between a Network operator and the Level 2 provider (signed for and on behalf of the Level 2 provider by Mr Bakhshi), dated 2 April 2014;
- An extract from the PhonepayPlus registration database identifying Mr Bakhshi as the responsible person for the Level 2 provider;
- Consumer complaints regarding the Service;
- Copy of the FCA interim permission to carry out consumer credit activities issued to the Level 2 provider, and a copy of the Consumer Credit Interim register identifying Mr Bakhshi as the named contact;
- A formal notification (together with annexures) to the Level 2 provider from the Executive regarding the outcome of case reference 57739 dated 8 July 2015;
- Payment reminders from the Executive to the Level 2 provider for outstanding invoices, dated 16 July 2015 and relating to case reference 57739;
- A standstill agreement between the Level 2 provider and the Executive dated 8 September 2015;



- A formal notification (together with annexures) to the Level 2 provider from the Executive regarding the outcome of case reference 87228 dated 16 March 2016;
- Correspondence between Mr Bakhshi and the Executive; and
- Emails and letters to Mr Bakhshi and the Level 2 provider (together with proof of service), confirming the date of the Tribunal hearing regarding a potential prohibition against Mr Bakhshi, dated 13 September 2016, and a schedule of the attempts made to bring the proceedings to the attention of the Level 2 provider and Mr Bakhshi.

The Executive conducted this matter in accordance with paragraph 4.8.8 of the Code. The Executive sent notification of a potential prohibition to Mr Bakhshi and the Level 2 provider on 13 September 2016 but it did not receive a response.

The Tribunal was satisfied that the Executive had made all reasonable attempts to notify Mr Bakhshi and the Level 2 provider of the prohibition proceedings and their rights, in accordance with paragraph 4.8.8 of the Code. On 26 October 2016, the Tribunal reached a decision regarding the imposition of a prohibition on Mr Bakhshi.

ii) Relevant Code provisions

- Paragraph 4.8.3(g) of the Code (14th edition) states:

“Having taken all relevant circumstances into account, the Tribunal may impose any of the following sanctions singularly or in any combination in relation to each breach as it deems to be appropriate and proportionate:

“(g) prohibit a relevant party and/or an associated individual found to have been knowingly involved in a serious breach or series of breaches of the Code from providing, or having any involvement in, any PRS or promotion for a defined period.”

- Paragraph 5.3.9 of the Code (13th and 14th edition) states:

“‘Associated individual’ is any sole trader, partner or director or manager of a premium rate service provider, anyone having day to day responsibility for the conduct of its relevant business and any individual in accordance with whose directions or instructions such persons are accustomed to act, or any member of a class of individuals designated by PhonepayPlus”.

- Paragraph 4.8.8 of the Code (14th edition) states:

“If a Tribunal considers that it may wish to make a prohibition under sub-paragraph 4.8.3(f), 4.8.3(g) or 4.8.3(h) in respect of any named individual, PhonepayPlus shall first make all reasonable attempts to notify the individual concerned and the relevant party in writing. It shall inform each of them that any of them may request an opportunity to make representations in writing, or in person, to the Tribunal and of the right of any of them (or PhonepayPlus itself) to instead require an oral hearing”.



Paragraphs 4.8.2(g) and 4.8.7 of the 13th Code of Practice have been superseded by paragraphs 4.8.3(g) and 4.8.8 of the 14th Code of Practice respectively.

SUBMISSIONS AND CONCLUSIONS

1. The Executive submitted that the following evidence indicated that Mr Bakhshi was an associated individual knowingly involved in a serious and/or series of breaches of the Code (as summarised below) in respect of the adjudications of 25 June 2015 and 3 March 2016.

Adjudication on 25 June 2015, case reference: 57739

On 25 June 2015, the Tribunal had adjudicated against the Services operated by the Level 2 provider. The Tribunal had upheld three breaches of the Code raised against the Level 2 provider which are outlined below.

Rule 2.3.2 - Misleading

The Executive had asserted that 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. The Level 2 provider denied the breach. 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 found that the missed calls were made by the Level 2 provider or persons acting on their behalf and upheld the breach.

Rule 2.3.1 – Fair and equitable treatment

The Executive had 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 had 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 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 Level 2 provider denied the breach. 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.

Para. 3.4.12(a) – Registration of a number

The Executive had noted that the Level 2 provider had been 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.

The Level 2 provider had 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. For the reason stated by the Executive, the Tribunal upheld a breach of paragraph 3.4.12(a) of the Code.

The Tribunal had concluded that the breach of rule 2.3.2 of the Code was very serious and the breach of rule 2.3.1 and para. 3.4.12(a) of the Code were serious. The Tribunal determined that the seriousness of the case overall was very serious and imposed 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; and
- 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.

In addition to the above sanctions, the Tribunal had recommended that the Level 2 provider pay 100% of the administrative costs incurred by PhonepayPlus.

Adjudication on 3 March 2016, case reference: 87225

On 3 March 2016, the Tribunal had adjudicated against the Level 2 provider for non-compliance with the sanctions imposed by the Tribunal on 25 June 2015 and non-payment of the associated administrative charge.



The Tribunal had upheld the following breaches of the Code:

- Paragraph 4.8.4(b) – Failure to comply with a sanction; and
- Paragraph 4.10.2 – Non-payment of an administrative charge.

The Tribunal had concluded that both breaches of the Code were very serious. The Tribunal determined that the seriousness of the case overall was serious and imposed the following sanctions:

- a formal reprimand; and
- a prohibition on the Level 2 provider from providing, or having any involvement in any premium rate service for a period of two years, starting from the date of publication of the decision, or until payment of the fine and original and instant administrative charges, whichever is the later.

In addition to the above sanctions, the Tribunal had recommended that the Level 2 provider pay 100% of the administrative costs incurred by PhonepayPlus.

Associated individual knowingly involved in a serious and/or series of breaches of the Code

The Executive submitted that Mr Bakhshi was an associated individual for the purpose of paragraph 5.3.9 of the Code as he had day to day responsibility for the conduct of the Level 2 provider. The Executive noted that Mr Bakhshi was the sole director of the Level 2 provider from the date of incorporation of the company on 2 June 2011, to 15 August 2016. The Executive submitted that this was confirmed by Companies House reports.

The Executive noted that on 2 April 2014, Mr Bakhshi, in his capacity as the director signed a Gateway Agreement between the Network operator and Level 2 provider for the provision of services. On 11 September 2014, Mr Bakhshi signed the 'Service Checklist' between the Network operator and Level 2 provider and named himself as the 'Main person responsible for PRS/SMS' and the person with 'Day to day responsibility for PRS/SMS'. Further, in April 2014, the Level 2 provider was granted interim permission to carry out consumer credit activities by the Financial Conduct Authority. The Consumer Credit Interim Register shows that Mr Bakhshi was the named contact for that application. The FCA's interim permission number was promoted on the Service website. Mr Bakhshi was also listed as the responsible person and primary contact on the PhonepayPlus database for the entirety of the relevant period.

In addition to the above, the Executive noted that Mr Bakhshi responded to information requests sent by the Executive during November and December 2014 providing detailed information relating to specific consumer MSISDNs. Mr Bakhshi also corresponded with the Executive in relation to both investigations against the Level 2 provider (case references 57739 and 87228).

Based on the information above, the Executive therefore asserted that Mr Bakhshi had day to day responsibility for the conduct of the Level 2 provider's business and was an associated individual



under paragraph 5.3.9 of the Code when breaches, including serious and very serious breaches of the Code, were upheld by the Tribunal on 25 June 2015 and 3 March 2016.

As primary contact and the only person who had ever been in the position of company director, the Executive submitted that Mr Bakhshi was, at the time the serious and very serious breaches of the Code occurred, exclusively responsible for oversight of the company affairs and ensuring that the company was properly managed, including complying with the Code.

The Executive asserted that Mr Bakhshi was knowingly involved in a series of breaches, including serious breaches of the Code which were upheld by the Tribunal on 25 June 2015. The Executive noted the following evidence:

- The signing of a Gateway Agreement between the Network operator and Level 2 provider for the provision of services (signed on behalf of the Level 2 provider by Mr Bakhshi on 2 April 2014);
- The signing of a the 'Service Checklist' between the Network operator and Level 2 provider (signed on behalf of the Level 2 provider by Mr Bakhshi on 11 September 2014). In particular, in the Service Checklist Mr Bakhshi names himself as both the 'Main person responsible for PRS/SMS' as well as the person with 'Day to day responsibility for PRS/SMS'; and
- The application to the Financial Conduct Authority for interim permission to carry out consumer credit activities (application made in April 2014 by the Level 2 provider Blue Triangle Technology with Mr Bakhshi as the named contact). The interim permission reference number (formerly OFT licence number) was promoted on the Level 2 provider's website.

The Executive noted that throughout the investigation Mr Bakhshi was the primary person to correspond with the Executive, either directly or copied into each correspondence. In addition to this, Mr Bakhshi was listed as the responsible person on the PhonepayPlus registration scheme for the entirety of the relevant period.

The Executive submitted that, as at 15 August 2016, Mr Bakhshi had a 75% majority shareholding in the Level 2 provider, however from 26 May 2015 to 26 May 2016 (three days prior to being issued with a breach letter), he was the sole shareholder. The Executive submitted that Mr Bakhshi's shareholdings demonstrate that he had a personal interest in the company in addition to his fiduciary duty to ensure that all commercial activities, including the operation of premium rate services, were conducted in compliance with the law and regulatory obligations

The Executive further asserted that, during Mr Bakhshi's directorship, key events occurred which would have alerted him to the fact that the Level 2 provider was likely to be operating a non-compliant Service:

- i) PhonepayPlus received 71 complaints regarding the Service and notified the Level 2 provider of each complaint during Mr Bakhshi's directorship, the earliest being on 13 October 2014. Out of the



71 complaints, 16 complaints were received directly by PhonepayPlus and an additional 55 complaints were referred to the Executive from Ofcom; and

- ii) PhonepayPlus issued a number of requests for information regarding the Service following ongoing receipt of the above complaints. Whilst some of the responses received by the Executive were sent by another individual, Mr Bakhshi was copied in. The Executive submits that as recipient of the communications and as a director that Mr Bakhshi ought to have been reasonably aware of these complaints.

The Executive accordingly submitted that Mr Bakhshi was aware that his company was likely to be operating a non-compliant Service, but did not take appropriate action to rectify the issue and continued to allow the Service to operate despite the influx of complaints.

In addition to the above, Mr Bakhshi submitted a detailed response to a preliminary direction dated 11 February 2015 and a further direction of 10 March 2015 demonstrating he had a thorough knowledge of the Service under investigation and was knowingly involved in the features that were in breach of the Code. Further to this Mr Bakhshi submitted a full response to the breach letter sent on 29 May 2015. The Executive submitted that the above indicates that Mr Bakhshi was actively involved in the investigation and breaches and whilst he did not make representations in the final Tribunal, demonstrated that his intention was to represent his company showing he was knowingly involved.

The Executive submitted that, for the following reason, Mr Bakhshi was knowingly involved in the non-payment of the fine and administrative charge, which ultimately resulted in two further serious breaches of the Code occurring and being upheld by a Tribunal on 3 March 2016.

The Executive noted that, following the Tribunal on 25 June 2015, formal notification of the Tribunal's decision was sent to Mr Bakhshi by email and post on 8 July 2015, which included invoices for payment of the £20,000 fine and £10,809 administrative charge. The deadline for payment of both invoices was seven working days from the date of the invoices (being 15 July 2015).

On 13 July 2015 the Level 2 provider, with Mr Bakhshi copied into the correspondence requested a review of the Tribunal decision. On 30 July 2015, the Executive confirmed to the Level 2 provider and Mr Bakhshi that its application for review had been certified as without merit. On 31 July 2015, the Level 2 provider contacted the Executive to request a payment plan as it was experiencing financial hardship and was therefore unable to make payment of the amounts outstanding by the specified deadline. PhonepayPlus requested relevant financial documentation from the Level 2 provider to support its request. As part of the documentation and correspondence submitted about financial hardship, Mr Bakhshi in an email dated 5 August 2015 stated:

"...Looking at our financial position with changes in the fcaathourity [sic] etc money has really been an issue hence will request for us to be in business allow us to do so. As inspite of the fact that the problem we landed in was due to the identity theft case, we are still saying that we want to



resolve this keeping in mind a lot of refunds some pertaining to the situation have already been processed in the past too. Please help us resolve this.

*Thanks
Yuwan Kant Bakhshi”*

Further, in an email dated 10 August 2015, in response to the Executive’s queries, Mr Bakhshi, provided details pertaining to the Level 2 provider’s company bank accounts and major financial outgoings:

“Dear Mr Bakhshi,

Thank you for your swift response. However, the answers you have provided to my queries are not clear and I would be grateful if would confirm the following:

- 1) You have supplied Blue Triangle Technology Ltd’s bank statements for the HSBS account 31342967. Please confirm whether this is the only account held by Blue Triangle Technology Ltd or whether it has any other company bank accounts.*

Response - Dear [redacted] that is the only account with Blue Triangle technology PVT LTD with co regd number - 07656072

- 2) From reviewing the bank statements you have provided, Blue Triangle Technology Ltd appear to make regular out payments of substantial sums to Blue Triangle Tech, which would suggest that Blue Triangle Technology Limited hold another bank account. Please clarify who these out payments are being made to and the nature of the payments.*

Response – Dear [redacted] that is different company that handles our digital marketing work where in they manage our online traffic generation as well as our websites plus our social media marketing accounts has nothing to do with the Blue Triangle Technology UK directly , it’s just a third party marketing firm.

In addition to the above questions, we would also be grateful if you would answer the following:

- 3) You state in your email below that work has been outsourced to a foreign counter part for which a fee is paid. Please confirm which payments on the bank statement you are referring to? (Blue Tech Payments)*
- 4) I note that substantial amounts are paid out to MS Blue Tech on 19 June, 3 July, 9 July and 16 July 2015. Please confirm who MS Blue Tech are and the nature of the payments. (Again the same company that handles our work)*
- 5) You propose a payment plan of £1500 every month from the revenue generated by Blue Triangle Technology Limited. However, we note that over the last three months Numbers Plus appear to have made revenue payments of between £5,000 and £8,200 each month. Please explain why you are only able to make payments of £1,500 each month. (Dear [redacted] – i was trying to be on the safe side so that the cash flow does not get a hit in any way) rest its in your handle you can propose and i shall confirm after reviewing if it’s possible or not ?*



Please note that the payment of the fine and admin charge is the responsibility of Blue Triangle Technology Ltd. We note your offer of payments being made from your monthly revenue directly from Numbers Plus Ltd but this is not something that we are able to arrange. If PhonepayPlus was to agree a payment plan (which is still under consideration) it would be a matter for Blue Triangle Technology Ltd as to how the instalments are made under the payment plan.

I agree this could be made possible , if you want that Blue Triangle Technology pays through on a monthly basis we can do this.

Regarding the Major outgoings on a monthly basis that you did ask for –

1. [redacted] – he was a chap who was helping us with advise in the uk .
2. [redacted] – Its my companies credit card.
- 3.[redacted] – They help us with data base to conduct email marketing etc .
4. [redacted] – sms marketing company.
5. [redacted] – it’s our voip provider .
6. [redacted] – Accountant to file returns etc as well as handle other co related formalities.
- 7.Phone Pay plus – charges for review etc .

These are some Major monthly payments that we do have to make on a regular basis to vendors from month to month .

*Thanks,
Yuwan*

Following receipt and consideration of the Level 2 provider’s submission of its financial documentation, a standstill agreement and payment structure were drawn up. Mr Bakhshi signed the agreement on 8 September 2015, which required the sum of £1,725 to be paid on the second day of each month until all amounts outstanding had been paid.

On 2 October 2015 the Level 2 provider advised that its first instalment of £1,725 would be paid late as Mr Bakhshi was travelling. The Executive asserted that this suggests that Mr Bakhshi was the sole person who could make payments on behalf of the Level 2 provider. PhonepayPlus received the first instalment of £1,725, three days late, on 5 October 2015. The Executive noted that between 23 and 27 October 2015, Mr Bakhshi stated that due to a fabricated story by a UK reporter he had no funds and was not in a position to make the next payment. On 28 October Mr Bakhshi confirmed that he would not be able to meet the next instalment and requested for this to be delayed:

“...it is possible I could plan my next months [sic] finances and come back to you as I am honestly in no position at this stage to pay as I have nothing on me.....”

The Executive on 29 October 2015 requested confirmation from the Level 2 provider as to when the next instalment would be paid and proof of its inability to make payment. Between 2 November



and 12 November Mr Bakhshi submitted PDF screen shots of bank accounts, however the Executive stated that it had not been satisfied by the evidence.

The total sum, representing both the fine and the administrative charge, originally owed to PhonepayPlus was £30,809. The Executive noted that PhonepayPlus only received a total payment of £3,225 from the Level 2 provider which has been allocated to the administrative charge. Therefore, the Level 2 provider still owed a total outstanding amount of £27,584 in relation to the fine and administrative charge.

On 13 November 2015, the Executive informed Mr Bakhshi that the Level 2 provider had failed to comply with the settlement agreement and would consider initiating enforcement action. On 16 November 2015, Mr Bakhshi requested a payment of £250 followed by quarterly reviews by the Executive of its bank statements. The Executive confirmed that the Level 2 provider had failed to comply with the terms of the settlement agreement and that it would initiate enforcement proceedings.

The Executive submitted that the above indicated that Mr Bakhshi was actively involved in the negotiation, implementation and subsequent non-compliance of a standstill agreement resulting in the Level 2 provider owing a total outstanding amount balance of £27,584 in relation to the fine and administrative charges, which demonstrated that his intention was to represent his company showing he was knowingly involved.

The Executive accordingly submitted that, as demonstrated in the above evidence, Mr Bakhshi was knowingly involved in the non-payment of the fine and administrative charge, which ultimately resulted in two further serious breaches of the Code occurring and being upheld by a Tribunal on 3 March 2016.

2. Mr Bakhshi did not provide a response to the notification of potential prohibition.
3. The Tribunal considered all the evidence presented to it. The Tribunal found that, in accordance with paragraph 5.3.9 of the Code, Mr Bakhshi was an associated individual, as he was a director of the Level 2 provider at the relevant time. The Tribunal noted that Mr Bakhshi signed agreements in relation to the operation of the Service, was registered with PhonepayPlus, and corresponded with the Executive regarding the alleged breaches of the Code, which demonstrated that he had day-to-day responsibility for the conduct of the relevant business. Further, the Tribunal found that, for the reasons raised by the Executive that Mr Bakhshi was knowingly involved in a series of serious and very serious breaches of the Code, which were upheld against the Level 2 provider on 25 June 2015 and 3 March 2016. The Tribunal noted that Mr Bakhshi's allegations regarding identity theft had been tested in a previous Tribunal which had not found that they provided a defence to the allegation of a breach of the Code, and that Mr Bakhshi's correspondence demonstrated that he was clearly aware of and knowingly involved in the failure to comply with sanctions.



Sanction

The Tribunal decided to prohibit Mr Bakhshi from providing, or having any involvement in, any premium rate service for a period of three years from the date of publication of this decision. The Tribunal considered that this was a proportionate sanction having taken into account all the facts of the case, including the part payment of the fine and Mr Bakhshi's history of engagement with the Executive.

Administrative charge recommendation:

100%