

Tribunal meeting number 196

Case reference: 99859

Level 2 provider: David Drysdale t/a Bright Sky Loans

Type of service: “Bright Sky Loans” fixed line loan brokerage service

Level 1 provider: Digital Select Ltd

Network operator: All Mobile Network operators

This case was brought against the Level 2 provider under Paragraph 4.5 of the Code

Background

The case concerned a fixed line loan brokerage service (the “Service”) which operated on various premium rate numbers. The Service was operated by David Drysdale t/a Bright sky Loans (the “Level 2 provider”).

The Level 1 provider for the Service was Digital Select Ltd (the “Level 1 provider”).

The Level 2 provider supplied the following description of the service flow:

“The service is fairly straight forward, customers contact us on our premium rate number, we get as many details about the customer as possible so we can find them the absolute best loan option based on their details and circumstances. Once we have all the details we require, the customers details are uploaded to our panel of lenders to get the best loan option for them. The lender who accepts the customer’s application will then contact the customer to finalise the loan”.

Based on the explanation given by the Level 2 provider above, the Executive understood that the Service operated by consumers completing an application on the Bright Sky Loans website. On completion of the web application a letter was sent to the consumers. The letter invited the consumers to call a PRN to ‘confirm [their] loan details’ When consumers called the PRN they were instructed to interact with a 15 minute IVR message and answer a series of questions. The Level 2 provider had also provided a copy of the IVR script. At the end of the call consumers were told ‘ we shall now assess your details and compare them to our panel of lenders in order to get you the best loan available. We shall contact you within 48 hours.’

The Executive made a test call to one of the premium rate numbers (“PRN”) for the Service. The Executive did not receive any contact from either the Level 2 provider or a loan provider. The Level 2 provider was unable to supply a copy of the call recording of the Executive’s interaction with the IVR during the test call.

The Level 2 provider also stated that “The service is promoted through our website www.brightskyloans.co.uk. The website has been running since the business was formed 4 years ago and is the main promotional material we currently use.”

On 10 August 2016 the Level 2 provider stated that his 'website and online database is totally offline for serious updates and maintenance, it has been offline for over 3 weeks now and so [the Level 2 provider] is not currently trading.'

On 12 August 2016, the Executive accessed the Level 2 provider's website at domain <http://brightskyloans.co.uk>. The Executive noted that the home page was not accessible, thus giving the impression that the website was down. However, when the Executive went to <http://brightskyloans.co.uk/contact.asp>, the Contact Page of the website was still available. The Executive noted that the same was true of all of the other pages of the website. The ability to access these pages showed that the website was not "totally offline for serious updates and maintenance" as suggested by the Level 2 provider..

On 1 September 2016, the Executive issued an Interim Warning Notice to the Level 2 provider. The Level 2 provider responded by stating:

"We have actually now ceased trading and have no plans to continue. I would like to relinquish my phone pay plus certificate please. We actually stopped trading many months ago so the business is no longer active. This is my response." (Annex 3 page 60).

On 2 September the Executive contacted the Level 1 provider to clarify whether the PRNs in association with the Service were still active. The Level 1 provider confirmed that they had received no instruction from the Level 2 provider to the effect that they were no longer trading, nor had they been asked to suspend or terminate the premium rate numbers associated with the Service.

On 2 September 2016, the Executive contacted the Level 2 provider for clarification of whether they would be instructing the Level 1 provider to suspend all numbers in relation to the Service. On 5 September 2016 the Level 1 provider contacted the Executive, stating that: "I can confirm we received notification on Saturday 03/09/2016 to terminate all numbers, which has now been completed."

The Executive has tested all PRNs in association with the service and confirmed that it was no longer in operation.

Background on David Drysdale

The Executive noted that Mr. Drysdale was disqualified from acting as a director from 16 September 2015 until 15 September 2024 by the Glasgow Sheriff Court for failing to keep proper company books, concealing the company's assets and failing to act in good faith towards the company's customers for a company trading as Welcome Loans.

The disqualification followed an investigation by the Insolvency Service into the company.

The Executive noted that many consumer complaints had also been received by the Financial Ombudsman service about Welcome Loans Ltd, a loan brokerage service, similar to Bright Sky loans Ltd. The Executive noted that the key difference was that payment for the service was undertaken via consumer's bank accounts. The consumer complaints were similar to Bright Sky Loans Ltd. The Executive attached a sample of 5 Ombudsman final decisions in relation to Welcome Loans Ltd.

Summary of complaints

The Executive had received 9 complaints since 12 January 2015.

Extracts from a sample of complainants' accounts can be found below:

"I received a letter from a company claiming to be a loan company with a premium rate number to call them on. I made this call on the assumption that they would refund me it but there are no means for me to enquire about this with them"

"consumer said he dialed number a couple of weeks ago and he has not received the loan documents promised to him consumer said he would like loan docs/cost of call refunded consumer said he has tried calling helpline no 08000112045 to no avail."

"...He received a letter from BRIGHT SKY LOANS, saying that he has been accepted for a loan and tells him to ring the number and answer the question but before they get to the questions there is an automated system consumers says that you have to stay the full 15 min duration on the call or the loan will not be paid out..."

The Investigation

In accordance with the transitional arrangements set out at paragraph 1.8 of the PSA Code of Practice (14th Edition), the Executive conducted this matter as a Track 2 procedure in accordance with paragraph 4.5 of the Code of Practice (14th Edition).

The Executive sent a Warning Notice to the Level 2 provider on 10th October 2016 with a deadline for response of 24th October 2016. Within the Warning Notice the Executive raised the following breaches of the PSA Code of Practice (the "**Code**"):

- Rule 2.3.2 (12th 13th and 14th Edition) – PRS must not mislead or be likely to mislead in any way
- Rule 2.6.4 (13th and 14th Edition) – refunds must be provided promptly and in an easily accessible manner
- Rule 2.3.1 (12th 13th and 14th Edition) - consumers must be treated fairly and equitably
- Paragraph 4.2.5 (13th Edition) – failure to provide requested information
- Paragraph 3.4.12(a) (12th Edition) – failure to register details of services

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);
- Correspondence between the Executive and the Level 1 provider;

- Correspondence with the loans company
- Screenshots of Bright Sky Loans website
- Phone-paid Services Authority Guidance on 'Consumer Credit'
- Call Recordings
- A sample of Financial Ombudsman Decisions in relation to Welcome Loans Ltd
- Financial Ombudsman decisions in relation to Bright Sky Loans
- FCA documentation relating to David Drysdale and [Name redacted "A"] and;
- The Warning Notice of 10th October 2016

Submissions and Conclusions

Preliminary Issues

The Executive applied to amend the allegation of a breach of paragraph 3.4.12(a) of the Code of Practice (12th Edition) to an allegation of breach of paragraph 3.4.14(a) of the Code of Practice (13th Edition and 14th Edition), that being the equivalent provision in those editions of the Code. The Executive explained that, due to an oversight, the breach had been brought only under the provisions of the 12th Code. However, the alleged breach also spanned the period of time in which the 13th and 14th Editions of the Code were in force. Consequently, the Executive applied to add a breach of paragraph 3.4.14(a) of the 13th and 14th Codes to cover the period of time these provisions were in force, namely 1st July 2015 to 11th July 2016 in respect of the 13th Code and 12th July 2016 to date in respect of the 14th Code.

The Executive also applied to amend the allegation of breach of paragraph 4.2.5 of the Code of Practice (13th Edition) to an allegation of breach of paragraph 4.2.3 of the Code of Practice (14th Edition), that being the equivalent provision in the 14th Edition of the Code. The Executive explained that, due to the same oversight, the breach had been brought under the provision of the 13th Code rather than the 14th Code.

The Executive confirmed that the Level 2 provider had not been informed of either of the applications to amend. This was due to the close proximity of the Tribunal Hearing when the oversight was discovered. However, the Executive submitted that the substantive allegations remained unchanged and there was no material difference to the nature of the alleged breaches on the facts of the case. The Executive further stated that, had the correct provisions been initially raised, nothing in the Case Report would have changed and therefore no prejudice would be caused to the Level 2 provider by the proposed amendments.

The Tribunal considered a previous Adjudication (Totalsolve Ltd, Case Reference 72405) in which a similar application to amend a breach of paragraph 3.4.12(a) of the Code (12th Edition) to a breach of paragraph 3.4.14(a) of the Code (13th Edition) had been successfully made by the Executive. However, the Tribunal noted that, in the Totalsolve case, the Level 2 provider had been put on notice of the application and had been given an opportunity to make representations.

The Tribunal refused both applications to amend. The Tribunal accepted that the Executive's applications to amend were technical in nature and that the wording of the provisions the Executive was applying to add or substitute were almost identical to the provisions as currently pleaded. However given that no attempt had been made to put the Level 2 provider on notice and the Level 2 provider had not been given the opportunity to respond it would not grant the Executive's application to amend at the hearing.

In respect of the breach of paragraph 3.4.12(a) of the Code of Practice (12th Edition), the matter would therefore be determined on the basis of the period of time that the 12th Code was in force (up to 31st June 2015). In respect of the breach of paragraph 4.2.5 of the Code of Practice (13th Edition), this would not be upheld, as the conduct alleged by the Executive did not occur during the period of time that the 13th Code was in force.

Alleged Breach 1

Paragraph 4.2.5 – failure to provide requested information (13th Edition)

The Tribunal did not uphold a breach of paragraph 4.2.5 of the Code as the conduct alleged by the Executive did not occur during the period of time that the 13th Edition of the Code was in force.

Decision: Not upheld

Alleged Breach 2

Rule 2.3.1 – Fair and Equitable Treatment (12th, 13th and 14th Edition)

1. “Consumers of PRS must be treated fairly and equitably.”

The Executive asserted that the Level 2 provider had breached rule 2.3.1 of the Code, as consumers had not received a genuine loan brokerage service.

In its correspondence with the Executive, the Level 2 provider had stated that the service operated via an online application, following which consumers were sent a letter asking them to call a premium rate number. Once consumers had called the number, they were required to stay on the line for the full length of the 15 minute call. The Level 2 provider had also stated that, following this process, a consumer’s details would be passed on to its “panel of lenders” and that the consumer would be contacted with suitable lender options.

On 15 July 2016 and 29 July 2016 the Executive had asked the Level 2 provider to provide a full list of all lenders it used in association with the Service and to provide copies of contracts it had with each lender. On 10 August 2016 the Level 2 provider had stated that ‘there are no written contracts with any of the lenders we have used previously. They were simply verbal agreements where we pass leads to them.’ On 11 August 2016 the Executive requested that the Level 2 provider provide a full list of all lenders that it had verbal agreements with and/or used in association with the provision of the Service. The Level 2 provider responded with the names of [Business name redacted “A”], [Business name redacted “B”] and [Business name redacted “C”]. The Executive had not contacted [Business name redacted “C”], as the Level 2 provider had previously stated that it had not passed any loans applications to this business. In respect of [Business name redacted “A”] and [Business name redacted “B”], the Executive checked for details of the loans companies using various methods such as Companies House searches, Creditsafe reports and Google searches, but had been unable to trace the companies. On 15 July 2016 the Executive requested that the Level 2 provider supply contact details for all of the loan companies.

On 22 July 2016 the Executive received the following response from the Level 2 provider:

‘We worked with [Business name redacted “A”] up until around May this year, they ceased trading though around the end of May and they never renewed their consumer credit license

with the FCA, their interim permission expired and in May they decided not to continue the business. It was actually a sole trader business so try looking for [name redacted "A"] T/A [Business name "A" redacted]. They were the main company we passed our applications to so it really affected us when they stopped trading and we had to practically stop trading too as we are still in the process of finding a suitable lender to replace them, we decided to overhaul our website and fix our databases and IT software etc at this point as we couldn't trade. The main contact was [name redacted "A"], the email I have for him was xxxxx@xxxxxxxx.co.uk. [Business name redacted "B"] went into liquidation around 2015, we only used them for applications very briefly in 2014. The main contact was a guy called [Name redacted "B"], the email I have for him is xxxxx@xxxxxxxxxxx.co.uk. We have not actually used {Business name redacted "C"} yet to pass applications to, this may change in the future but as of today we have not gave them any applications, they are on our panel but remain dormant. Like I said [Business name redacted "A"] was the main business we used to pass our applications to, but they decided not to proceed with getting their full FCA permission around May this year, their interim permission number / consumer credit license number was xxxxxxxx.'

The Executive asserted that, based upon the information supplied by the Level 2 provider, that from May 2016 onwards, there were no lenders available in relation to the Service for the Level 2 provider to pass consumer applications to.

The Executive further stated that, according to the Financial Conduct Authority ("FCA") register, a number of requirements were imposed on David Drysdale by the FCA with effect from 15 April 2016 as follows:

*"David Drysdale is closed to new Business This schedule sets out the terms of a requirement imposed on David Drysdale with effect from 15 April 2016. Requirement The requirement for which David Drysdale applied to be imposed upon is that: * With immediate effect David Drysdale must cease to carry on any business that involves a regulated activity of credit broking for which it has permission from the Financial Conduct Authority. For the avoidance of doubt, this requirement applies in respect of activities carried on by David Drysdale, as well as activities that may be carried on by any of its appointed representatives, associated firms or other agents of the firm; and * With immediate effect David Drysdale must cease to use or sell customer data relating to the credit broking business; and * With immediate effect David Drysdale must not accept or enter into any new contractual arrangements and new applications with customers and David Drysdale will place a restriction on all of its websites from accepting new applications including a clear and prominent notice on all David Drysdale websites to this effect; and * With immediate effect David Drysdale must cease to use any Premium Rate Service telephone subscription for the purposes of facilitating customer contact for whatever reason...."*

Given the FCA requirements as outlined above, the Executive asserted that, after 15 April 2016, there could be no genuine loan brokerage service for consumers to interact with. Despite this, the Service itself was not suspended or terminated by the Level 2 provider until 3 September 2016. Revenue had continued to be generated by the Service in the months of May, June, July and August 2016. The Executive submitted that consumers had therefore been able to interact with a Service, which was of no value to them, for a period of approximately 5 months.

The Executive stated that, on 14 September 2016, it had contacted the email addresses provided by the Level 2 provider for [Business name redacted "A"] and [Business name redacted "B"], the two loan companies the Level 2 provider had stated it had previously used. Other than these email addresses, no other contact details had been supplied by the Level 2 provider. The Executive had asked both of the loan providers for the following information in relation to the Service:

"The dates that you conducted any business with David Drysdale t/a Bright Sky Loans and; Evidence of all communications with David Drysdale in connection with the Bright Sky Loans Service, including copies of all correspondence, emails, messages and telephone records. This request extends to all communications, including (but limited to) all referrals of consumers by Bright Sky Loans to loans providers in respect of the service. Please also provide the telephone numbers you used to contact and communicate with David Drysdale in relation to the Service."

On 14 September 2016, the Executive received notification that the domain "xxxxxxx.co.uk" did not exist and therefore the email had not been delivered. In relation to [Business name redacted "A"], the Executive had not received any response to the email sent to them on 14 September 2016. Consequently, on 19 September 2016 the Executive had sent an email to them requesting a response no later than 5pm on Tuesday 20 September 2016. No acknowledgement or response to this request had been received as at the date of the warning notice.

The Level 2 provider had listed [Name redacted "A"] as the primary contact for [Business name redacted "A"] and had provided a consumer credit license number. However, when the Executive had searched for [Business name redacted "A"] using his consumer credit license number on the FCA Consumer Credit Register, the Register showed that his interim consumer credit permission had lapsed on 29 February 2016 and not in May 2016, as had been stated by the Level 2 provider. The Executive noted that, according to the FCA Register, [Name redacted "A"] had previously held interim permission to operate as a Credit broker, but not as a loan provider, as had been stated by the Level 2 provider.

On 14 September 2016 the Executive had contacted David Drysdale t/a Bright Sky Loans and requested that the following information be provided by 19 September 2016:

"...Please provide evidence of all communications with any loans providers including ["Business names "A", "B" and "C" redacted] in connection with the Bright Sky Loans Service, including copies of all correspondence, emails, messages and telephone records. This request extends to all communications, including (but limited to) all referrals of consumers by Bright Sky Loans to loans providers in respect of the service. Please provide the telephone numbers you used to contact and communicate with [Business name redacted "A"] and [Business name redacted "B"] in relation to the Service...."

The Executive had not received a response to this request for information.

The Executive asserted that, based upon the information supplied by the Level 2 provider in its email of 23 August 2016, no genuine loan brokerage service was available to consumers between April 2016 and 3 September 2016. Furthermore, the Executive submitted that it could be reasonably inferred that no genuine loan brokerage service had ever been provided by the Level 2 provider, for the following reasons:

- i. The Level 2 provider had not supplied any commercial agreements, documentation, emails, telephone records or evidence of any kind establishing that Bright Sky Loans conducted business with any loans providers.
- ii. Two of the three loans companies that the Level 2 provider purported to have conducted business with could not be traced.
- iii. The email address provided for [Business name redacted "B"] was invalid.
- iv. The primary contact for [Business name redacted "A"] was listed with the FCA as a credit broker and not as a loan provider.
- v. [Business name redacted "A"] did not acknowledge or respond to the request for information sent by the Executive.
- vi. The Level 2 provider did not supply details of any consumers who had received a loan via the Service.
- vii. The Level 2 provider did not provide details of the computer system that it had used in respect of the loan brokerage service.
- viii. The Level 2 provider did not provide a recording of the test call made by the Executive on 14 July 2016, which suggested that the call had not been recorded or retained.
- ix. The Executive had not been contacted by any loans company following its test call to the Service.

The Executive submitted that charging consumers in respect of a loan brokerage service which was not a genuine service amounted to unfair and unequitable treatment of consumers and that the Level 2 provider was therefore in breach of rule 2.3.1 of the Code.

2. The Level 2 provider did not provide a response.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal considered that the evidence submitted by the Executive was overwhelming. The Tribunal noted that the Level 2 provider had been unable to supply any evidence to show that it had been operating a genuine loan brokerage service, such as contracts with loans providers or any evidence of the oral agreements with loans providers. In

addition, the Tribunal noted that the Level 2 provider had not provided a single example of a consumer who had received a loan via the Service.

For the reasons advanced by the Executive, as outlined above, the Tribunal was satisfied that no genuine loan brokerage service had ever been in operation by the Level 2 provider and that consumers who had paid for the Service had not been treated fairly or equitably. Accordingly, the Tribunal upheld a breach of rule 2.3.1 of the Code.

Decision: Upheld

Alleged Breach 3

Rule 2.3.2 – Misleading (12th, 13th and 14th Edition)

1. “PRS must not mislead or be likely to mislead in any way.”

The Executive asserted that the promotion of the service was misleading. On the 28 April 2016, the Executive sent the Level 2 provider a request for information regarding the Service. From the response provided to the information request, the Executive understood that a consumer would opt into the service by completing an online application form. The Level 2 provider stated:

‘If any letters are sent to customers, they would have to agree to our terms and conditions and have opted in on our website beforehand...’

The Executive referred to the screenshot taken from the promotional material supplied by the Level 2 provider (Appendix B). The Executive noted that the promotional material supplied by the Level 2 provider consisted of letters sent to the consumer after they had interacted with the Service via the website. All of the example letters supplied by the Level 2 provider to the Executive in response to the Executive’s requests for information contained the consumer’s name and address. The letters were addressed personally to the consumer and stated:

“Congratulations! We received your unsecured loan application repayable over 18 months. Great news, as you can see in the live computer screenshot above, you have now been checked and assessed by our Client Approval System and we are pleased to accept you as a client. To proceed please telephone us on the number below, we aim to get your loan paid out immediately after your call.”

The Executive asserted that the promotional letters provided by the Level 2 provider were misleading in their content and use of language, as they indicated to the consumer that they had been accepted as a client and the use of the colour green and the capitalisation of the word ‘ACCEPTED’ suggested to a consumer that they had already been accepted for a loan. An image of a computer screenshot was included in the letter to the consumer, suggesting that a computer system had been used to process the loan application.

The Executive also submitted that the use of the phrase ‘to get your loan paid out’, written in large red font, incorrectly suggested to a consumer that there was a loan

waiting to be paid out if they telephoned the premium rate number and completed the full 15 minute call.

The Executive referred to the following consumer complaint and asserted that it indicated that the consumer's understanding was that he had been accepted for a loan, and that the loan would not be paid out unless he stayed on the call for the full 15 minute duration:

"He received a letter from BRIGHT SKY LOANS, saying that he has been accepted for a loan and tells him to ring the number and answer the question but before they get to the questions there is an automated system consumers says that you have to stay the full 15 min duration on the call or the loan will not be paid out..."

The Executive submitted that the consumer complaint was supported by the recorded information consumers heard when calling the PRN which stated:

"Please note this call will last for exactly 15 minutes in length. To get your loan paid out it is absolutely essential that you complete this full 15 minute call. Please do not hang your phone up during this call you will be given essential critical information regarding the pay out of your loan at the end of this 15 minute call."

The Executive noted that in some cases the letters or phone calls to consumers had stated that consumers would be contacted 'immediately' in relation to their loan, which did not appear to have happened.

In light of all of the above, the Executive asserted that consumers had been misled by the promotional letters and that the Level 2 provider was therefore in breach of Rule 2.3.2 of the Code.

2. The Level 2 provider did not provide a response.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal considered that the word "ACCEPTED" in large green letters on the letter sent to consumers was very misleading, as it created the impression that a consumer had been accepted for a loan, when no real prospect of receiving a loan existed. In addition, the Tribunal considered that the statement both in the letter and at the beginning of the phone call, which advised consumers to stay on the phone for the full 15 minute duration of the call in order to receive their loan, was also misleading. The statements created the impression that the 15 minute phone call would trigger the loan pay out, which it did not. For these reasons, the Tribunal was satisfied that customers had been misled into making the phone call to the PRS number and also misled into staying on the call for the 15 minute duration. Accordingly, the Tribunal upheld a breach of rule 2.3.2 of the Code.

Decision: Upheld

Alleged Breach 4

Rule 2.6.4 – Refunds (12th, 13th and 14th Edition)

1. "Where refunds are provided to consumers they must be provided promptly and in an easily accessible manner."

The Executive asserted that the Level 2 provider had breached rule 2.6.4 of the Code on the basis that it did not provide an easily accessible refund process for consumers.

On 28 April the Executive had asked the Level 2 provider to confirm whether any refunds had been given to consumers. The Level 2 provider had provided the following response:

'So far 23 refund have been made to consumers as they contacted us to ask for a refund of their call charges. The refunds made to consumers were for full refunds. 100% of refunds have been provided.'

On 29 July 2016, in a further direction for information, the Executive had requested that the Level 2 provider 'please provide details and evidence of all consumers who have received a refund in relation to the service.' The Level 2 provider had responded on 10 August 2016 and stated:

'unfortunately I am unable to access our database to provide these exact details as our website and database is down for repairs, updates and maintenance. Once it is fixed I can supply these details for you.'

On 12 August 2016, the Executive had accessed the Level 2 provider's website at domain <http://brightskyloans.co.uk>. Whilst the home page had not been accessible, thus giving the impression that the website was down, when the Executive had gone to <http://brightskyloans.co.uk/contact.asp>, the Contact Page of the website had still been available. The same had been true of all of the other pages of the website. The Executive submitted that the fact that it had been possible to access these web pages showed that the website had not been "totally offline" for serious updates and maintenance" as had been suggested by the Level 2 provider.

The Executive noted that consumer complaints had stated the following:

'consumer dialed number a couple of weeks ago and he has not received the loan documents promised to him consumer said he would like loan docs/ cost of call refunded consumer said he has tried calling helpline no. 08000112045 to no avail'

'I received a letter from a company claiming to be a loan company with a premium rate number to call them on. I made this call on the assumption that they would refund me for it but there are no means for me to enquire about this with them.'

The Executive had listened to a call recording supplied by the Level 2 provider, during which consumers were only advised of the refund process at the end of the call. The call recording stated the following:

'Please note, if you would like to get a refund of your call charges please write to: Bright Sky Loans, 272 Bath Street, Glasgow, G2 4JR or email us at customer support at brightskyloans.co.uk'.

The Executive submitted that the refund process for consumers was onerous, as consumers were required to write to a postal address in order to receive a refund. In addition, consumer complaints received by the Executive had alleged that there were no means to enquire about refunds. The Executive asserted that the process of having to write down a postal address whilst on the telephone might have led to consumers transcribing the address incorrectly. Furthermore, as the address details were not repeated during the call, if a consumer had been unable to write the details down in time, they would have been required to telephone the premium rate number again and listen to the full 15 minute duration, thereby incurring further charges.

The Executive stated that it had been unable to verify the refund process as the provider had failed to supply any evidence of refunds given to consumers.

The Executive referred the Tribunal to the Phone-paid service Authority Guidance on "Consumer Credit" which stated that 'Providers must consider the complexity surrounding the brokerage arrangements put in place and the potential delay in agreements being offered or completed, and ensure the refund process is effective and easily accessible to consumers. The claim process must be clearly explained to consumers at the earliest opportunity.'

The Executive asserted that the fact that the Level 2 provider required consumers to write to a postal address in order to receive a refund, coupled with the consumer complaints received demonstrated that the refund process was not easily accessible. For these reasons, the Level 2 provider was in breach of Rule 2.6.4

2. The Level 2 provider did not provide a response.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal noted that the Level 2 provider's response to the request for information from the Executive dated 6 June 2016 contained a description of the Level 2 provider's refund policy as follows:

"Any customer who is unhappy with the service they have received will be given a full refund via a cheque. Refunds must be requested in writing and on occasions we made need a copy of the customer's phone bill due to fraudulent claims".

The Tribunal noted that the contact details for queries or complaints was outlined in very small print at the bottom of the letter sent to consumers, and stated that consumers with complaints should write to a postal address:

"Queries or complaints should be mailed to David Drysdale T/A Bright Sky Loans, 272 Bath Street, Glasgow, G2 4JR".

Once the consumer made the telephone call to the Service, the consumer would have to wait until the end of the call to hear the details of the refund process, including the postal address to write to. The Tribunal agreed with the Executive's submission that there was a risk that consumers might not have been able to take down the address details properly which would, in turn, have required them to make another call to the phone line and incur more premium rate charges. The Tribunal noted that although

contact information and complaints information were provided on the letter it may have been easily overlooked by a consumer.

For these reasons, together with the fact that the Level 2 provider had not supplied details of any refunds it had issued to consumers, the Tribunal was satisfied that the Level 2 provider had not provided a refund process that could be easily accessed by consumers. Accordingly, the Tribunal upheld a breach of rule 2.6.4 of the Code.

Decision: Upheld

Alleged Breach 5

Rule 3.4.12(a) – registration (12th Edition)

“Level 2 providers must provide to PSA 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 asserted that the Level 2 provider had acted in breach of paragraph 3.4.12(a) of the Code as it had failed to provide PSA with relevant details to identify the Service operating on PRN 09135950321 to consumers, and had failed to provide PSA with the identity of the Level 1 provider concerned with the provision of the Service.

The Executive submitted that the Code required that Level 2 providers supply relevant details to identify services to consumers. The Registration Scheme was in place to facilitate providers to supply relevant details to identify their services to consumers. Once a provider had supplied details of its services, including which premium rate numbers it operated on, the details would then appear on the ‘Number Checker’ section of the PSA website. The Number Checker allowed consumers to enter a phone number that they may not recognise on their phone bill, and find out information regarding that number.

The Executive noted that PRN 09135950321 was active in the month of June 2015 and generated revenue, but was not registered with PSA at that time.

The Executive asserted that where services were not registered, consumers did not have the ability to access information relating to the Service, which impaired the PSA’s regulatory function. The Executive submitted that the failure to provide the requisite information to PSA by registering the Service number was a breach of paragraph 3.4.12(a) of the Code.

2. The Level 2 provider did not provide a response.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal noted that the PRN 09135950321 had generated gross revenue totalling £3.41 during the month of June 2015, during which time the PRN had not been registered with PSA.

For this reason the Tribunal was satisfied that the Level 2 provider had operated the PRN in breach of registration requirement. Accordingly, the Tribunal upheld a breach of paragraph 3.4.12(a) of the Code.

Decision: Upheld

Sanctions

Representations on sanctions made by the Executive

1. The Executive submitted that the following sanctions were appropriate:
 - a formal reprimand;
 - a prohibition on David Drysdale from involvement in PRS services (4.8.3(g)) for a period of five years
 - a fine of £70,000; and
 - universal refunds (4.8.3 (j)) to all consumers who have used the Service

based on an initial assessment of breaches 1, 2, 3 and 4 as “very serious” and breach 5 as “serious”.

Initial overall assessment

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

Rule 2.3.1 – Fair and Equitable Treatment

The initial assessment of rule 2.3.1 of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

The case had a clear and highly detrimental impact on consumers;

Consumers had incurred an unnecessary cost and the service was incapable of providing any purported value;

The nature of the breach was likely to severely damage consumer confidence in premium rate services and;

The service was designed for the specific purpose of generating revenue streams for an illegitimate reason.

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 case had a clear and highly detrimental impact on consumers;

The nature of the breach was likely to severely damage consumer confidence in premium rate services; and

Consumers had incurred an unnecessary cost and the service was incapable of providing any purported value.

Rule 2.6.4 – Refunds

The initial assessment of rule 2.6.4 of the Code was **serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

The case had a clear and highly detrimental impact on consumers and;

The nature of the breach was likely to severely damage consumer confidence in premium rate services.

Paragraph 3.4.12(a) - Registration

The initial assessment of paragraph 3.2.12(a) of the Code was **significant**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criteria:

The Level 2 provider intentionally failed to comply with a PSA registration requirement

Final overall assessment

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

- The Level 2 provider had continued to operate a PRS when he was aware that the Financial Conduct Authority had imposed a restriction upon him requiring him not to operate a PRS.

The Tribunal noted that the Executive had submitted that the Level 2 provider had previously been disqualified from acting as a company director following his misconduct as a director of “Welcome Loans Limited” a similar loans brokerage service, but considered that this conduct related to a breach of regulatory and legal requirements outside of the provision of the Code, and was not a relevant aggravating factor in the context of the breaches of the Code.

The Tribunal did not find any mitigating factors.

The Level 2 provider’s evidenced revenue in relation to the Service in the period from July 2014 to July 2016 was in the range of Band 3 (£250,000 to £499,999).

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

The Tribunal considered the Executive’s recommendation that David Drysdale should be prohibited from providing, or having any involvement in, any premium rate service for a period of 5 years. Having considered the evidence before them, the Tribunal noted that David Drysdale was the sole proprietor of Bright Sky Loans and that he had been the person who responded to the Executive’s correspondence throughout. The Tribunal was therefore satisfied that David Drysdale was a relevant party who had been knowingly involved in a serious breach of the Code. Accordingly, the Tribunal found that Mr. Drysdale should be prohibited from providing, or having any involvement in, any premium rate service for a period of 5 years.

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

- a formal reprimand;
- a fine of £120,000;
- a requirement that the Level 2 provider make refunds, within three months, to all consumers who have used the Service for the full amount spent, regardless of whether or not they have claimed a refund, and provide evidence to PSA that such refunds have been made.
- A prohibition on Mr. David Drysdale from providing, or having any involvement in, any premium rate service for a period of five years from the date of publication of this decision, or payment of the fine and administrative charge, whichever is later.

Administrative charge recommendation:

100%

The decision of a previous Tribunal on 8 September 2016 to impose interim measures is attached at Appendix A.

The screenshot from promotional material supplied by the Level 2 provider is attached at Appendix B.

Appendix A

Application for interim measures pursuant to Code of Practice paragraph 4.6

Case ref:	99859
Service:	Bright Sky Loans
Level 2 provider:	David Drysdale
Level 1 provider:	Digital Select Limited
Cost:	£3.60 per minute

Premium rate numbers: 09039910088, 09039918888, 09135950036, 09039950088, 09039990088, 09135950321, 09135950444

Tribunal number: 194

Adjudication

The Tribunal has paid full regard to the material supplied by the Executive. In respect of the material submitted by the Executive, the Tribunal noted in particular:

- 9 complaints had been received about the Service between January 2015 and June 2016;
- The nature of the apparent breaches referred to by the Executive, including their submissions on the misleading promotional material in respect of the service and the Level 2 provider's failure to provide information when requested to do so by the Executive;

and

- The information in the Debt Collection Withhold Assessment.
- The Tribunal has paid full regard to the representations provided by the Level 2 provider.
- The Tribunal has paid regard to the Supporting Procedures, including the factors set out at paragraph 80 and paragraph 91.

Having considered the evidence before it, the Tribunal has made the following determinations:

1) At first appearance (and subject to evidence, arguments or information being later supplied and/or tested), there does appear to be sufficient evidence that could support breaches of Code of Practice rules 2.3.2 and 2.3.4 and paragraph 4.2.5.

1.1) In respect of the apparent breach of code rule 2.3.2, the Tribunal noted that the language used in the material promoting the service was potentially misleading, and in particular the references to consumers having been “accepted” for a loan and which suggested to the consumer that a loan was waiting to be paid out.

1.2) In respect of the apparent breach of code rule 2.6.4, the Tribunal noted that, although there was a refund process available to consumers, this did not appear to be easily accessible.

1.3) In respect of the apparent breach of paragraph 4.2.5 of the Code the Tribunal noted that it appeared that the Level 2 provider had failed to provide, when requested to do so by the Executive, the following information:

a) details of any consumers (including the complainants) who had received a loan via the Service and;

b) a copy of a recording of a telephone call made by the Executive on 14 July 2016 to the premium rate number associated with the Service;

c) a failure to provide any evidence of any arrangements with third party funders or loan providers.

2) The Tribunal does consider that the Level 2 provider will not be able or willing to pay such refunds, administrative charges and/or financial penalties that may be imposed by a Tribunal in due course. The Tribunal noted in particular:

a) The Level 2 provider’s representations that he had ceased trading, which the Tribunal did not consider would affect the Executive’s case or the likely sanctions that might be imposed by a Tribunal in due course;

b) the high risk factors identified in the Executive’s Debt Collection Withhold Assessment;

c) the Level 2 provider’s recent disqualification from acting as a company director for a period of 9 years for failing to keep proper company books, concealing the company’s assets and failing to act in good faith towards customers whilst acting as the sole director of a loans arranging company “Welcome Loans Limited”;

d) the level of seriousness (very serious) of the apparent breaches;

e) the evidence before the Tribunal regarding the Service, in particular the failure of the Level 2 provider to supply details of any consumers who had received loans via the Service, or to supply any written commercial agreements between the Level 2 provider and loan companies. The Tribunal considered that, from the evidence presented to it, there was a possibility that a subsequent Tribunal might reasonably infer that no

genuine loan brokerage service existed. Therefore there was a possibility that a Universal Refund sanction might be imposed by a Tribunal in due course.

3) The Tribunal is satisfied that PhonepayPlus has made reasonable endeavours to notify the Level 2 provider of its initial findings and the proposed interim measures.

4) Noting the comparable previous case referred to by the Executive, the Tribunal considered the case but noted that there are distinguishing features between that case and this case; the single most significant feature here is the Level 2's disqualification as a director in relation to another Loan Company and the failure to provide any evidence of anyone successfully having received a Loan.

5) The Tribunal considers that the measures set out below are appropriate and proportionate to take in the circumstances of this case.

6) Accordingly, the Tribunal hereby directs that:

a) PhonepayPlus is authorised to direct a withhold of up to £364,721.

b) The sums directed to be withheld may be allocated and re-allocated between any Network operators or Level 1 providers for the Service as the Executive sees fit from time to time, provided that the total sum withheld by all providers does not exceed the maximum sum authorised in this decision.

c) The Executive is given discretion to vary the total directed to be withheld downwards in the event that it is provided with alternative security which is, in its view, sufficient to ensure that such refunds, administrative charges and/or financial penalties as it estimates a CAT may impose in due course are paid.

d) Such interim measures are to be revoked upon the case being re-allocated to Track 1 or otherwise discontinued without sanction.

MOHAMMED KHAMISA QC

13th SEPTEMBER 2016

Appendix B

Screenshot from the Level 2 provider's promotional letter

CLIENT APPROVAL SYSTEM v1.3

Logout

Change Details [Client Application](#) Criteria Details Change User

Client: [redacted]

Address Check: Verified Additional Checks: Verified

Loan Amount: £700 Tel: [redacted]

Date of Birth: n/a Repayment Term: 18 months

Email: [redacted]

100% COMPLETE

ACCEPTED

CLIENT FINAL ANALYSIS

PASSED

**Representative 21% APR Variable. Representative Example:
£700 borrowed over 18 months. 18 monthly payments of £45.35. Total repayable £816.32**