

Tribunal meeting number: 256
Case reference: 179036
Level 2 provider: Madlenka Limited (West Cork, Ireland)
Type of service: Directory Enquiries
Level 1 provider: Telecom 2 Limited (London, UK)
Network operator: N/A

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

Background

The case concerned non-payment of financial sanctions and administrative charges; and the failure to refund consumers as directed by an earlier Tribunal (case reference: 151390). The previous case, heard on 12 June 2019, concerned a directory enquiry service (“**the Service**”) operated by Madlenka Limited (the “**Level 2 provider**”). The Level 1 provider for the Service was Telecom 2 Limited (the “**Level 1 provider**”).

The Executive had received 11 complaints concerning the Service since 31 May 2018. No additional complaints had been received since the Tribunal of 12 June 2019.

The Service was operating on premium rate numbers 118068 and 118298 costing £6.98 per call and £3.49 per minute thereafter. Consumers searching online for the number of a company they wanted to contact were served adverts by the Level 2 provider directing them to call an 0345 number. If called during office hours (Monday – Friday 9am to 5pm), consumers were connected directly to the company (i.e. the AA, RAC, SKY). However, the numbers were not the official contact numbers for these companies. If dialled out of hours, there was a recorded message telling callers to dial a 118 number.

On 12 June 2019, the Tribunal upheld breaches of rules 2.2.7 (pricing information) and 2.3.2 (misleading). The overall assessment of the case was ‘**very serious**’ and the following sanctions were imposed as a result:

- a requirement to remedy the breach
- a formal reprimand
- compliance advice
- access to the Service be barred until the Level 2 provider remedy the breach to the satisfaction of the Executive
- 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 the PSA that such refunds have been made

- a fine of £250,000.

The Tribunal also recommended payment of 100% of the administrative charge: £8,093.50. The Level 2 provider was notified of the Tribunal's decision on 12 June 2019.

The PSA Executive (the "**Executive**") submitted that the Level 2 provider had made no attempt to comply with the financial sanction, pay refunds, nor pay the administrative charges, therefore the Executive submitted that breaches of paragraph 4.8.6(b) and paragraph 4.11.2 of the PSA Code of Practice (the "**Code**") had occurred.

Preliminary issue - Service

In response to questioning by the Tribunal, the Executive clarified that the Warning Notice had been sent to the Level 2 provider by email and that a hardcopy of the bundle had also been sent to the Level 2 provider's registered address. The Executive confirmed it had received a standard delivery notice which demonstrated that the Warning Notice had been delivered to the reception of the Level 2 provider's registered premises. The Executive further stated that an email had been sent to the Level 2 provider which reminded the Level 2 provider that if it did not respond to the Warning Notice, the Executive would proceed on the basis that the Level 2 provider did not wish to respond to it. The Executive confirmed that its emails to the primary email address for the Level 2 provider had been delivered. The Executive further stated that attempts to contact the Level 2 provider by phone had also been made on 17 October 2019. The Executive explained that two customer service numbers displayed on the promotional material for the Service and also a number supplied by the Network provider and he had left a voice messages on all 3 numbers. No response had been received.

The Tribunal noted the proof of service documents contained in the bundle and the correspondence sent by the Executive to the Level 2 provider. The Tribunal was satisfied on the balance of probabilities that the Warning Notice had been validly served by the Executive.

Alleged breach 1

Paragraph 4.8.6 (b) of the 14th Edition of the Code of Practice states:

"The failure of any relevant party to comply with any sanction within a reasonable time will result in (b) a further breach of the Code by the relevant party, which may result in additional sanctions being imposed."

1. The Executive submitted that a breach of 4.8.6 (b) had occurred because the Level 2 provider had made no attempts to comply with the sanctions imposed by the Tribunal of 12 June 2019.

On 12 June 2019, the following breaches of the Code were upheld against the Service (Case reference: 151390):

- Rule 2.2.7 – Pricing information

- Rule 2.3.2 – Misleading

The overall assessment of the case was ‘**very serious**’ and the following sanctions were imposed:

- a requirement that the provider remedy the breaches
- a formal reprimand
- compliance advice
- that access to the Service be barred until the breach is remedied to the satisfaction of the Executive
- 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 a good cause to believe that such claims are not valid, and provide evidence to the PSA that such refunds have been made
- a fine of £250,000.

On 26 June 2019, a formal notification of the Tribunal outcome was sent to the Level 2 provider by email and post, which included an invoice of the fine with a deadline for payment of 5pm on 5 July 2019. In addition, a form requesting contact details for refund requests was sent with a deadline for completion of 28 June 2019. The Level 2 provider did not respond.

On 8 July 2019, a payment reminder was sent to the Level 2 provider. The Level 2 provider did not respond.

On 16 September 2019 the Executive advised the Level 2 provider that a breach of sanctions case had been raised against it. The Executive received no response from the Level 2 provider, and no payment of the fine or administrative charge.

On the 26 June 2019, following the imposition of the refund sanction by the Tribunal, the Executive requested that the Level 2 provider complete and return a refund request form by 28 June 2019, which detailed all the necessary information to be communicated to complainants who wished to claim a refund. The Level 2 provider did not respond to this request from the Executive.

The Executive stated that it had sent emails to all complainants, detailing the Level 2 provider’s contact details should they wish to obtain a refund. The Executive had received correspondence from a complainant to suggest they were unable to receive a refund.

On 27 June 2019, the Executive directed the Level 1 provider to bar access to the Service operated by the Level 2 provider. The Level 1 provider confirmed the Service was barred on 27 June 2019. This sanction did not require the Level 2 provider to take any action and the Executive did not consider it necessary, where the Service had been prevented from running, to raise a breach of paragraph 4.8.6(b) in relation to this sanction.

The Executive relied upon correspondence with the Level 2 provider demonstrating that the Level 2 provider had made no attempt to pay the fine or comply with the general refund sanction. Therefore, the Executive asserted that the Level 2 provider had intentionally breached rule 4.8.6(b) in not paying the fine or refunding consumers. The Executive submitted that the Level 2 provider had failed to engage with the Executive and had shown a disregard for the decision of the earlier Tribunal.

2. The Level 2 provider did not make representations or respond to the Warning Notice.
3. The Tribunal considered the Code and all the evidence before it, in particular the correspondence exchanged between the Executive and the Level 2 provider and the lack of response by the Level 2 provider post the adjudication of 12 June 2019.

The Tribunal was satisfied that the Level 2 provider had not responded to payment reminders or made any attempt to pay the fine or issue refunds to consumers.

The Tribunal was satisfied on a balance of probabilities that the Level 2 provider had not complied with the fine and refunds sanctions within a reasonable time period. Accordingly, the Tribunal upheld a breach of paragraph 4.8.6(b) of the Code.

Decision: Upheld

Alleged breach 2

Paragraph 4.11.2 of the 14th Edition of the Code of Practice states:

“Non-payment of the administrative charge within the period specified by the PSA will be considered a breach of the Code and may result in further sanctions and/or legal action.”

1. The Executive stated that the Level 2 provider had acted in breach of paragraph 4.11.2 of the Code as the full administrative charge of £8,825.11 remained outstanding.

The Executive stated that it had sent a formal notification of the Tribunal outcome to the Level 2 provider on 26 June 2019. This included a separate invoice in respect of the administrative charge of £8,093.50.

On 08 July 2019, a payment reminder was sent to the Level 2 provider.

The Executive relied upon correspondence with the Level 2 provider which demonstrated that the Level 2 provider had made no attempt to pay the administrative charge.

The Level 2 provider had not complied with the sanctions and administrative charge and the full administrative charge of £8,093.50p remained outstanding.

2. The Level 2 provider did not make representations or respond to the Warning Notice.

3. Having considered the Code and the evidence before it, the Tribunal was satisfied on the balance of probabilities that the Level 2 provider had not paid the administrative charge within the specified period of time. Accordingly, the Tribunal upheld a breach of paragraph 4.11.2 of the Code.

Decision: Upheld

Breach severity – initial assessment

The Executive considered the breach of paragraph 4.8.6 (b), failure to comply with a sanction, to be ‘**very serious**’ as the breach was committed intentionally and demonstrated a fundamental disregard for the Code.

The Executive considered the breach of paragraph 4.11.2, non-payment of administrative charge, to be ‘**very serious**’ as the breach was committed intentionally and demonstrated a fundamental disregard for the Code.

The Tribunal agreed that the breach of paragraph 4.8.6 (b) was ‘**very serious**’, for the reasons advanced by the Executive. The Tribunal was satisfied that the breach was intentional and demonstrated a disregard for the finding of the earlier Tribunal.

The Tribunal further considered that the breach of 4.11.2 was ‘**very serious**’, for the reasons advanced by the Executive. The Tribunal considered that the breach was deliberate and noted that the Level 2 provider had not demonstrated any intention to pay the charges. The Tribunal concluded that the Level 2 provider had demonstrated a disregard for the finding of the earlier Tribunal as well as a fundamental disregard for the requirements of the Code of Practice.

The Tribunal considered that the overall severity of this case was ‘**very serious**’.

Recommended sanctions – initial assessment

The Executive recommended the following initial sanctions:

- a formal reprimand
- that the Level 2 provider be prohibited from having any involvement in any current or future PRS operated on a number or number range within the PSA’s regulatory remit for 5 years or until all sanctions imposed by the Tribunal of 12 June 2019 have been complied with, whichever is the later.

The Level 2 provider did not make representations in respect of the recommended sanctions.

The Tribunal was in agreement with the Executive’s recommended initial sanctions.

The Tribunal considered that credible deterrence in this case would be achieved by prohibiting the Level 2 provider from re-entering the premium rate service market. This would restrict the

business operations of the Level 2 provider ensuring that future non-compliant activity is deterred thus protecting consumers from future harm.

Mitigating factors applying as a whole

The Executive submitted that there were no mitigating factors.

The Tribunal did not find any mitigating factors.

Aggravating factors applying as a whole

The Executive submitted that it was an aggravating factor that the Level 2 provider had failed to respond to the Executive's request on 26 June 2019, following the imposition of the refund sanction by the Tribunal, that the Level 2 provider complete and return a refund request form which detailed all the necessary information to be communicated to complainants who wished to claim a refund.

The Tribunal considered that the Level 2 provider's failure to engage with the Executive and to respond to the Warning Notice was an aggravating factor.

Proportionality considerations

The Executive stated that the recommended sanctions of a formal reprimand and five-year prohibition on the Level 2 provider were proportionate and justified.

The Executive acknowledged that the totality of the recommended sanctions would result in the removal of the Level 2 provider from the UK premium rate industry and that this might impact on the financial health of the provider's business. However, the Executive was satisfied that the prohibition was justified when balanced with the need to ensure that the non-compliance with sanctions would not be repeated by the Level 2 provider or others within the industry. Given the intentional and very serious nature of the breaches, the Executive was of the view that recommended sanctions are the minimum necessary to achieve the sanctioning objective of credible deterrence.

The Tribunal considered that the prohibition was a proportionate sanction. It was satisfied that there was a clear need to deter the Level 2 provider and the wider industry from the commission of similar breaches, The Tribunal regarded the breaches to be '**very serious**' and noted that industry's compliance with sanctions was essential to the effectiveness of the regulator and the broader protection of consumers. The Tribunal therefore did not consider that there was a need to make any adjustment to the initially assessed sanctions.

Final sanctions

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

- formal reprimand
- a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of five years, from the date of the publication of this decision, or until all sanctions imposed by the Tribunal of 12 June 2019 have been complied with, whichever is the later.

Administrative charge recommendation: 100%