

Tribunal meeting number 265

Case reference: 184638
Level 2 provider: ECN Digital Ltd
Type of service: Information, Connection and Signposting Services
Level 1 provider: N/A
Network operator: Core Telecom Ltd

This case was brought against the Level 2 provider under Paragraph 4.5 of the 14th edition of the PSA Code of Practice (“the **Code**”).

Background

The case concerned the non-payment of financial sanctions and administrative charges that were imposed by an earlier Tribunal (case reference 158026). The previous case, which was heard on 17 December 2019, concerned a ‘Call Connection’ service operating on the number ranges 0870 1860 XXX, 0870 1862 XXX, 0870 1863 XXX, 0870 1864 XXX, 0870 1866 XXX, 0870 1868 XXX, 0870 1869 XXX and 0870 4942 XXX (“the **Service**”). The Service was operated by ECN Digital Ltd (the “**Level 2 provider**”) and the Network operator for the Service was Core Telecom Ltd (the “**Network operator**”).

The Service offered connection to organisations that were sought by consumers. The Service cost 13p per minute plus a call connection charge, and it operated across various web domain addresses. The Level 2 provider registered with the Phone-paid Services Authority (PSA) on 17 September 2018.

The Network operator informed the PSA that the Service commenced operation on 7 September 2015 and that the Level 2 provider was allocated a total of 508 premium rate numbers between September 2015 and February 2018. The Level 2 provider registered its Service numbers with the PSA on 22 March 2019.

On 27 September 2019, the Network operator advised the PSA that it had terminated all the Level 2 provider’s Service numbers.

On 17 December 2019, the Tribunal upheld breaches of Rule 2.2.2, Rule 2.2.7, Paragraph 3.11.3 – Special Condition ICSS 5, Paragraph 3.11.3 – Special Condition ICSS 11, and Paragraph 3.11.3 – Special Condition ICSS 13.

The overall assessment of the case was “**very serious**”, and the following sanctions were imposed as a result of the Tribunal’s findings:

- a formal reprimand

- a bar on access to the Service for a period of three months, or until full payment of the fine and administration charge, whichever is the later
- 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 that the Level 2 provider pay 100% of the administration charges, which amounted to £8,043.00.

The Level 2 provider was formally notified of the Tribunal's decision on 6 January 2020.

On 20 March 2020, the PSA received correspondence from the appointed liquidator of the company, which advised that the Level 2 provider had entered voluntary liquidation on 19 March 2020.

Apparent breaches of the Code

On 22 April 2020, the Executive sent a Warning Notice to the Level 2 provider in which the following breaches of the Code were raised:

Paragraph 4.8.6(b) – Failure to comply with any sanction

Paragraph 4.11.2 – Non-payment of the administrative charge

Preliminary issues – service

The Tribunal considered whether adequate notice had been given to the Level 2 provider about the current proceedings. The Tribunal noted all the correspondence that the PSA had received from the liquidator, which included: the 20 March 2020 appointment letter; an email dated 4 May 2020 advising that the liquidator had been in contact with all former directors of the company and provided them with a copy of the Warning Notice; an email dated 5 May 2020 attaching a response from one of the former directors of the company; and an email from the liquidator dated 9 June 2020 stating that the liquidator did not intend to make any informal representations at the upcoming hearing.

The Tribunal was satisfied that the documents had been properly served on the Level 2 provider.

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 17 December 2019.

On 17 December 2019, the Tribunal upheld five breaches of the Code against the Level 2 provider. The overall assessment of the case was ‘**very serious**’ and the following sanctions were imposed as a result:

- a formal reprimand
- a bar on access to the Service for a period of three months, or until full payment of the fine and administration charge, whichever is the later
- 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.

On 6 January 2020, 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 by 5pm on 20 January 2020. The Level 2 provider did not respond.

Also on 6 January 2020, the Executive requested that the Level 2 provider complete and return a refund request form, detailing all the necessary information to be communicated to complainants who wished to claim a refund. The Level 2 provider failed to provide this information to the PSA.

On 13 January 2020, a payment reminder was sent to the Level 2 provider. The Level 2 provider did not respond.

On 19 March 2020, the Executive advised the Level 2 provider that a breach of sanctions case had been raised against it.

On 20 March 2020, the Executive received correspondence from the appointed liquidator of the company advising that the Level 2 provider had entered voluntary liquidation on 19 March 2020.

On 17 April 2020, the Executive directed the Network operator to ensure that access to the Service was suspended in accordance with the sanction imposed by the Tribunal on 17 December 2019. The Network operator responded to the direction confirming that the Service had been disconnected on 27 September 2019.

On 22 April 2020, the Executive issued the breach of sanctions Warning Notice to the Level 2 provider’s appointed liquidator.

The Executive submitted that the Level 2 provider was in breach of paragraph 4.8.6(b) because it was fully aware of its requirement to comply with the financial penalty and had been given an adequate opportunity to do so, but it had made no attempt to pay the fine within a reasonable time period.

2. The Level 2 provider had entered voluntary liquidation on 19 March 2020. The liquidator had contacted the former directors of the company about the PSA's proceedings and forwarded a letter to the PSA from one of the company's former directors. In this letter, the Level 2 provider stated that it did not dispute the findings of the PSA's investigation and that it had left the market and had no intention of operating premium rate services in the future.

3. The Tribunal considered the Code and all the evidence before it. 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 that the Level 2 provider had not complied with the financial sanction 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 £8,043.00 remained outstanding.

The Executive stated that on 6 January 2020 it had sent a formal notification of the Tribunal outcome to the Level 2 provider by email and post. This included a separate invoice in respect of the administrative charge of £8,043.00 with a deadline for payment by 5pm on 20 January 2020.

On 13 January 2020, a payment reminder was sent to the Level 2 provider. This reminder stated the following: *"...failure to pay the administration charge may result in a breach of paragraph 4.11.2 of the Code being raised against you"*. The Level 2 provider did not respond.

On 19 March 2020, the Executive advised the Level 2 provider that a breach of sanctions case had been raised against it.

On 20 March 2020, the Executive received correspondence from the appointed liquidator of the company, which advised that the Level 2 provider had entered voluntary liquidation on 19 March 2020.

The Executive submitted that the Level 2 provider was in breach of paragraph 4.11.2 as it was fully aware of its requirement to pay the administrative charge and had been given adequate opportunity to do so but the full administrative charge remained outstanding.

2. The Level 2 provider had entered voluntary liquidation on 19 March 2020. The liquidator had contacted the former directors of the company about the PSA's proceedings and forwarded a letter to the PSA from one of the company's former directors. In this letter, the Level 2 provider stated that it did not dispute the findings of the PSA's investigation and that it had left the market and had no intention of operating premium rate services in the future.
3. Having considered the Code and the evidence before it, the Tribunal was satisfied 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 administrative charge. 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 five years or until all sanctions imposed by the Tribunal of 17 December 2019 have been complied with, whichever is the later.

The Level 2 provider did not make representations in respect of the recommended sanctions. However, it had stated that it had no intention of working within the PRS market again and would not be operating PRS in the future.

The Tribunal agreed 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 and would thereby protect 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 breaches continued after the Level 2 provider had become aware of them. The Executive highlighted that the payment reminder, formal notification, and breach of sanction allocation notification that had been sent to it would have alerted the Level 2 provider of the need to comply with sanctions. The Executive further submitted that the underlying case should also be considered as relevant breach history.

The Tribunal did not agree with the Executive that these were separate and independent aggravating factors but considered that these factors were part and parcel of the breaches that had been raised against the Level 2 provider.

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 noted that the Level 2 provider's Service had been suspended by its Network operator on 27 September 2019 and that the company entered voluntary liquidation on 19 March 2020. The Executive

therefore submitted that any prohibition on the Level 2 provider would be likely to have limited impact. The Executive further submitted that although the company entered voluntary liquidation on 19 March 2020, there was still a prospect that the company could recommence trading in the future. 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 the recommended sanctions were the minimum necessary to achieve the sanctioning objective of credible deterrence.

The Level 2 provider did not provide a specific response in respect of any proportionality considerations but had stated in its undated letter forwarded by the liquidator on 5 May 2020 that it had left the market and had no intention of operating premium rate services in the future. It further stated that it had remedied issues and all services and websites promoting its services had been switched off permanently.

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 a provider'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:

- 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 five years or until all sanctions imposed by the Tribunal of 17 December 2019 have been complied with, whichever is the later.

Administrative charge recommendation: 100%