

Tribunal meeting number: 257
Case reference: 178293
Level 2 provider: Tobaji Ltd
Type of service: Call Connection Service
Level 1 provider: Telecoms World Plc
Network operator: TalkTalk Communications Ltd

This case was brought against the Level 2 provider under Paragraph 4.5 of the 14th edition of the Code of Practice.

Background

The case concerned non-payment of the financial sanction that had been imposed by an earlier Tribunal (case reference: 130464). The previous case, heard on 13 September 2018, concerned a call connection service operating on the number ranges 0871976xxxx and 0871789xxxx (“**the Service**”) by Tobaji Ltd (the “**Level 2 provider**”). The Level 1 provider for the Service was Telecoms World Plc (the “**Level 1 provider**”).

The Service was a call connection service that offered connection to organisations sought by consumers. The Service cost 13p per minute plus any call connection charges.

The Level 2 provider confirmed that the Service commenced operation on 14 November 2016. The Level 1 provider had confirmed that the Service had not generated revenue since October 2017.

On 13 September 2018, the Tribunal upheld breaches of rules 2.2.1 (transparency and pricing), 2.2.2 (organisation’s identity), 2.3.2 (misleading), Paragraph 3.11.3- Special Conditions ICSS 3, Paragraph 3.11.3- Special Conditions ICSS 11, Paragraph 3.11.3- Special conditions ICSS 13.

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

- a formal reprimand
- a fine of £700,000
- a requirement that the Level 2 provider remedy the breach by addressing the issues around transparency and pricing, number registration, and the ICSS Special conditions
- a requirement that the Level 2 provider seek compliance advice on its Service promotions, such compliance advice to be implemented to the satisfaction of the Phone-paid Services Authority (PSA)
- a direction that access to any current or future ICSS
- 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 PSA that such refunds have been made.

The Tribunal also recommended payment of 95% of the administrative charge which amounted to: £12,151.75. The Level 2 provider was notified by email and post of the Tribunal's decision on 27 September 2018, which included an invoice of the fine with a deadline for payment by 5pm on 2 November 2018. On 28 September 2018, an invoice of the administrative charge was sent to the Level 2 provider by email and post. On 10 January 2019, a second payment reminder email was sent to the Level 2 provider.

The Executive received a total of £14,146.40, although this payment was received directly from the Level 1 provider as a result of an interim measure (withhold of Service revenue) being imposed on the Level 2 provider.

The Level 2 provider had made no attempts to comply with the financial sanction that was imposed, namely the £700,000 fine.

Preliminary issue - Service

The Tribunal was satisfied that the sending of the documents had been properly served by email and by post. Accordingly, the Tribunal was satisfied that proper service had been given 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 financial sanction that had been imposed by the Tribunal of 13 September 2018. As set out in the “Background” section above, on 13 September 2018, an earlier Tribunal had upheld six breaches of the Code against the Level 2 provider.

The Executive stated that its basis for bringing a breach of paragraph 4.8.6(b) was that the Level 2 provider had made no attempt to make payment of the £700,000 fine imposed.

On 27 September 2018, 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 2 November 2018. On 28 September 2018, an invoice of the administrative charge was sent to the Level 2 provider by email and post.

On 2 October 2018, the Level 2 provider contacted the Executive by email with questions regarding the refunding of customers.

On 11 October 2018 and 10 January 2019, payment reminders were sent to the Level 2 provider. The Level 2 provider did not respond.

On 6 August 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. Notwithstanding this, as noted above, the Executive received £14,146.40 from the Level 1 provider as a result of an interim measure. The Executive offset this sum against the outstanding administrative charge and accordingly did not raise a breach under 4.11.2 of the Code in respect of the Level 2 provider's failure to pay the administrative charge.

The Executive did not consider it was proportionate to raise a breach of 4.8.6(b) in respect of the General Refunds sanction. On 27 September 2018, 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 1 October 2018, which detailed all the necessary information to be communicated to complainants who wish to claim a refund.

The Level 2 provider provided this information by email on 4 October 2018.

The Level 2 provider had previously responded to complaint information requests and refunded complainants, and the Executive 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 no further correspondence from any complainants to suggest they were unable to receive a refund.

Therefore, the Executive did not consider it proportionate to raise a breach of paragraph 4.8.6(b) in respect of this sanction in the circumstances.

The Executive did not raise a breach of paragraph 4.8.6(b) in respect of the compliance advice sanction since the Level 2 provider confirmed on 7 November 2017 that it was removing the Service numbers from its website pages until the PSA's investigation into the Service was complete. The Service numbers had not been promoted on the website since. Therefore, the Executive did not consider it proportionate to raise a breach of paragraph 4.8.6(b) in respect of this sanction.

The Executive did not raise a breach of paragraph 4.8.6(b) in respect of the Service Bar sanction since the Level 1 provider confirmed that access to the Service was barred on 28 December 2017. This sanction did not require the Level 2 provider to take any action and the Executive did not raise a breach of paragraph 4.8.6(b) in relation to it.

Therefore, the Executive did not consider it proportionate to raise a breach of paragraph 4.8.6(b) in respect of this sanction.

Accordingly, the Executive confirmed that it had raised a breach of 4.8.6(b) solely based on the fact that the Level 2 provider had made no attempt to pay the financial penalty imposed by the previous Tribunal.

2. The Level 2 provider did not respond to the Warning Notice. The Level 2 provider did respond to the Executive's questions about refunding consumers and submitted correspondence in relation to its dissatisfaction with the earlier Tribunal's decision.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal acknowledged the Executive's correspondence with the Level 2 provider in relation to refunds and the Level 2 provider's correspondence with the Executive in relation to the earlier Tribunal's decision and the sanctions imposed. The Tribunal was satisfied that the Level 2 provider did not make any attempt to pay the fine.

Based on the above, the Tribunal was of the view that the Level 2 provider was fully aware of its requirement to comply with the financial penalty and had been given adequate opportunity to do so. The Tribunal was therefore satisfied, on a balance of probabilities, 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

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 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 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 premium rate services (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 13 September 2018 have been complied with, whichever is the later

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

The Tribunal agreed with the Executive's initial recommended sanctions.

The Tribunal considered that credible deterrence in this case would be achieved by prohibiting the Level 2 provider from re-entering the PRS market. This would restrict the business operations of the Level 2 provider ensuring that future non-compliant activity was 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 there were no aggravating factors.

The Tribunal did not find any aggravating factors.

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. The Executive recognised that this would prevent the Level 2 provider from operating existing PRS 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 breach, the Executive was of the view that the 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 breach 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 13 September 2018 have been complied with, whichever is the later.

Administrative charge recommendation: 100%