

Tribunal meeting number 214

Case reference: 135070
Level 2 provider: Tijamobile Limited
Type of service: N/A
Level 1 provider: N/A
Network operator: N/A

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

Background

A service provided by the Level 2 provider Tijamobile Limited (the “**Level 2 provider**”) was the subject of a Phone-paid Services Authority (“**PSA**”) Tribunal adjudication (case reference: 72141), on 8 December 2016. The sanctions imposed by the Tribunal were:

- a formal reprimand;
- a fine of £500,000;
- a requirement that the Level 2 provider remedy the breach by ensuring that it has robust verification of each consumer’s consent to be charged before making any further charge to the consumer, including for existing subscribers to the Service;
- a requirement that the Level 2 provider submit to a compliance audit of its procedures for ensuring that consumers (including existing subscribers) were not charged unless the Level 2 provider held robust evidence of those consumers’ consent to be charged. The audit is to be carried out by a third party approved, and to a standard prescribed, by the PSA, and the costs of such audit are to be paid by the Level 2 provider. The audit must be completed and the recommendations implemented within a period specified by the PSA and;
- a requirement that the Level 2 provider must refund all consumers who claim a refund, for the full amount spent by them on the Service, within 28 days of their claim, save where there is good cause to believe that such claims are not valid, and provide evidence to PSA that such refunds have been made.

In addition, an administrative charge of £16,335.12 was imposed.

The Level 2 provider was informed of the sanctions imposed in a formal notification, which included an invoice for payment of the fine of £500,000, and it was sent by email and by post on 21 December 2016. The Level 2 provider was informed that payment of the fine and administration charge was due by no later than 5 January 2017.

On 2 January 2017, the Level 2 provider requested a review of the Tribunal’s decision. A legally qualified Chair of the Code Adjudication Panel (“**CAP**”) considered the review application and

on 20 February 2017 determined that there were no reasonable grounds to conclude that a review was merited and as such, the Chair refused the review application.

On 3 March 2017 the Executive contacted the Level 2 provider to inform it that the fine and administrative charge should be settled by 14 March 2017.

On 15 March 2017, the Executive issued a direction to the Level 1 providers, Veoo Limited and Zamano Solutions ("**Level 1 providers**") to suspend the Service for non-compliance with the fine sanction under paragraph 4.8.6 (a) of the Code. On the same date the Executive directed the Level 1 providers to release withheld revenues as part payment of the overdue fine and administration charge. The Level 1 providers released a total of £239,456 to the PSA. As the PSA gives precedence to the administration charge, the withheld revenues fully discharged the administration charge of £16,335.12 and reduced the outstanding fine to £276,879.12.

On 27 March 2017 the Level 2 provider requested a payment plan proposal. On the same date, the Executive indicated that the Level 2 provider must put forward proposals for a payment plan for a period of not more than one year supported by financial information to support its contention that it was unable to meet the fine imposed.

On 21 March 2017, the Executive received notice of the proposed dissolution of the Level 2 provider from Companies House, to which the Executive lodged an objection.

On 3 April 2017, the Level 2 provider confirmed its intention to cease operating premium rate services and to leave the premium rate service market in the UK. On 7 April 2017, the Level 2 provider confirmed that it was not its intention to avoid compliance with sanctions and that it intended to pay the outstanding fine. No further correspondence was received from the Level 2 provider after this date.

In respect of the refund sanction imposed by the Tribunal of 8 December, the Level 2 provider had stated that it had issued refunds of service charges to complainants. On 10 July 2017, the Executive contacted a sample of 25 complainants in order to establish whether they had been refunded. The Executive received seven responses from the sample of complainants contacted. Of the seven complainants who responded, three complainants confirmed that they have received a full refund, three complainants confirmed that they did not make a claim for a refund and one complainant confirmed that they had not received a refund in respect of service charges amounting to £45.

From the complainant responses received, it was unclear to the Executive whether refunds had been provided to all those who had made a valid claim.

In respect of the remedy the breach sanction imposed by the Tribunal of 8 December 2016, the PSA held no information to suggest that the Level 2 provider had remedied the breach. However by virtue of the formal suspension of the service by PSA on 15 March 2017, the Executive noted that the risk of actual and potential harm to consumers had, in effect, ceased. No further complaints had been received post the suspension of the Service. The Executive therefore did not allege a breach of this sanction.

The Investigation

The Executive conducted this matter as a Track 2 procedure in accordance with paragraph 4.5 of the Code of Practice (14th Edition) (“the Code”)

The Executive sent a Warning Notice to the Level 2 provider on 14 July 2017 with a deadline for response of 28 July 2017. Within the Warning Notice the Executive raised the following breach of the Code :

- Paragraph 4.8.6(b) – Failure to comply with a sanction

The Level 2 provider did not respond to the Warning Notice. On 23 August 2017, the Tribunal reached a decision on the breach raised by the Executive. The Tribunal considered the following evidence in full:

- The post adjudication notification sent to the Level 2 provider, including the fine and administrative charge invoices and the refund request;
- The Tribunal adjudication of 8 December 2016;
- Post adjudication correspondence between the Executive and the Level 2 provider;
- The case report including the Warning Notice dated 14 July 2017;
- Proof of service of the Warning Notice;
- Complainant refund claim responses

Submissions and Conclusions

Alleged Breach 1

Paragraph 4.8.6(b) – “The failure of any relevant party to comply with any sanction within a reasonable time will result in: a further breach of the Code by the relevant party, which may result in additional sanctions being imposed.”

1. The Executive stated that the Level 2 provider had acted in breach of paragraph 4.8.6(b) of the Code as it had failed to comply with the sanctions imposed by the Tribunal.

As set out in the “Background” section above, on 8 December 2016, a previous Tribunal upheld three breaches of the Code against the Level 2 provider. One of the sanctions imposed was a fine of £500,000.

On 3 March 2017, the Executive had sent the Level 2 provider a formal notification of the Tribunal’s decision, which included the ‘post adjudication letter’, administrative and fine sanction invoices and the adjudication report.

On 17 March 2017 the Level 2 provider responded to the post adjudication letter and requested that the Executive consider a payment plan for the outstanding fine revenues.

On the same day, the Executive responded detailing the necessary steps the Level 2 provider would be required to take, along with documentation that was needed to evidence the Level 2 provider's claims of financial hardship. The deadline to submit the required evidence was 30 March 2017. No evidence had been supplied by the Level 2 provider to this date.

The Level 2 provider had been contacted on two further occasions on 31 March 2017 and 4 April 2017. However, it failed to provide the required information. The Executive submitted that, without a formal proposal supported by the relevant evidence, the Executive had been unable to agree a payment plan with the Level 2 provider.

As set out in the "Background section", there had been lengthy correspondence between the Executive and the Level 2 provider between December 2016 and April 2017. The Executive submitted that, despite the length of time and opportunities provided to the Level 2 provider to make payment of the outstanding fine, it had failed to submit a proposal that ensured compliance with the outstanding sanctions, and had since ceased all communication with the PSA. As a result, £276,879.12 of the fine sanction remained outstanding.

For the reasons set out above, the Executive asserted that the Level 2 provider had not complied with the fine sanction imposed by the Tribunal and that a breach of 4.8.6(b) of the Code has occurred.

In response to questioning by the Tribunal, the Executive confirmed that a new deadline of 14 March 2017 for payment of the outstanding fine had been sent by email to the Level 2 provider, following the determination of its application for review.

The Executive also confirmed that correspondence had been exchanged between the and the Level 2 provider between 14 March and 27 March 2017 whereby a possible payment plan had been discussed. However, the financial information requested by the Executive in that correspondence had not been provided.

The Executive confirmed that the Level 2 provider was aware that revenues were being withheld by the Level 1 providers. The Executive could not be certain that the Level 2 provider was aware of the precise amount being withheld but thought it likely that the Level 1 providers would have confirmed the amount to the Level 2 providers.

2. The Level 2 provider did not make representations or respond to the Warning Notice of 14 July 2017.
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 post the adjudication of 8 December 2016. The Tribunal was satisfied on the balance of probabilities that the Level 2 provider had not paid the fine sanction within a reasonable period of time.

Accordingly, the Tribunal upheld a breach of paragraph 4.8.6(b) of the Code.

Decision: UPHELD

SANCTIONS

Representations on sanctions made by the Executive

The Executive submitted that the following sanctions were appropriate:

- A 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, starting from the date of publication of this decision;

This was based on a preliminary assessment of the breach as “very serious”.

The Level 2 provider did not make representations on the recommended sanctions.

Initial overall assessment

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

Rule 4.8.6(b) – Failure to comply with a sanction

The initial assessment of the breach of paragraph 4.8.6(b) of the Code was **very serious**. In determining the initial assessment for this breach of the Code the Tribunal applied the following criterion:

- The Level 2 provider's failure to comply with the remedy the breach sanction demonstrates fundamental non-compliance with the obligations imposed by the Code, which in the view of the Tribunal, undermines public confidence in the regulatory regime and premium rate services.

The Tribunal's initial assessment was that, overall, the breach was **very serious**.

Final overall assessment

In determining the final overall assessment for the case, the Tribunal found the following aggravating factor:

- The Level 2 provider had attempted to dissolve the limited company without notifying the regulator.

In determining the final overall assessment for the case, the Tribunal found the following mitigating factor:

- The Level 2 provider had partially complied with the fine sanction (albeit part payment was from withheld funds) and had taken some steps to mitigate the consumer harm by suspending the service.

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

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

- a 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, starting from the date of publication of this decision or from the remedying of the breach by payment of the outstanding fine, whichever is the earliest; and
- a requirement that the Level 2 provider must remedy the breach by paying the outstanding fine.

Administrative charge recommendation:

100%