

Tribunal meeting number 205/ Case 2

Case reference: 119573
Level 2 provider: DSLB LTD (UK)
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 DSLB LTD (the “**Level 2 provider**”) was the subject of a Phone-paid Service Authority (“**PSA**”) investigation and adjudication (case reference: 79449), which resulted in sanctions being imposed by a Tribunal on 2 September 2016. The sanctions imposed by the Tribunal were a formal reprimand, a fine of £200,000, a requirement that the Level 2 provider remedy the breaches: by ensuring that it holds 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, and by ensuring that no consumers are charged after sending STOP to the Service; and a requirement that the Level 2 provider 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 had been made. In addition, an administrative charge of £12,520.52 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 £200,000, sent by email and by post on 15 September 2016. Payment was due on 26 September 2016.

On 21 September 2016, the Level 2 provider requested a review of the Tribunal decision. The Level 2 provider was provided with the necessary documentation and informed that the date to submit its application along with its application fee was 30 September 2016. The Executive did not receive the review application nor was payment of the fine and administrative charge made by the deadline.

On 25 October 2016, the Level 2 provider contacted the Executive to request a face-to-face meeting to discuss a solution to payment of the fine. The Executive requested that the Level 2 provider provide its proposals along with supporting evidence ahead of any meeting being agreed. The Level 2 provider stated that it would do so by the stipulated deadline of 9 November and it also asked the Executive to arrange for part payment of the fine and administrative charge from the revenues being withheld by the Level 1 provider Veoo Limited (“**the Level 1 provider**”).

On 3 November 2016, the Executive directed the Level 1 provider to release the withheld revenues to the PSA. On 9 November 2016, the Level 2 provider submitted its proposal to the Executive, which asked the Executive to allow it to resume trading to generate revenue to settle the amounts outstanding to the PSA. The Executive rejected the invitation for a meeting as the proposal was insufficient as the Executive was of the view it did not include any suggestion of how the Level 2 provider would comply with the remedy the breach sanction and until this was rectified, the Executive could not agree to the Service resuming. The Level 2 provider was given a further opportunity to submit another proposal but the Level 2 provider failed to correspondence any further with the Executive. On 21 November 2016, the Executive issued a direction to the Level 1 provider to suspend the Service for non-compliance under paragraph 4.8.6 (a) of the Code.

The PSA received withheld revenues of £33,924.58 from the Level 1 provider which was used to pay the administrative charge and part payment of the fine. The Level 2 provider failed to pay the full amount of the fine in the time period specified or at all. The amount outstanding to the PSA is £178,595.94.

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 23 February 2017 with a deadline for response of 9 March 2017. Within the Warning Notice the Executive raised the following breaches of the PSA Code of Practice (the "**Code**"):

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

The Level 2 provider did not provide a response to the Warning Notice. The Tribunal considered the confirmations of delivery of the Warning Notice by post and email to the Level 2 provider, and was satisfied that the Executive had made all reasonable attempts to inform the Level 2 provider of the proceedings. On 21 April 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 decision of 2 September 2016;
- Post adjudication correspondence between the Executive and the Level 2 provider between 15 September 2016 and 15 November 2016;
- Correspondence with the Level 1 provider of 3 November 2016 and 21 November 2016;
- Correspondence with Companies House between 13 and 24 January 2017;
- The case report including the Warning Notice dated 23 February 2017; and
- Proof of service of the Warning Notice.

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 noted that on 2 September 2016, the Tribunal adjudicated on a service operated by the Level 2 provider that had been the subject of a PhonepayPlus (now known as PSA) investigation (case reference:79449). The adjudication by consent resulted in the imposition of sanctions, including a fine of £200,000.

On 15 September 2016, the Executive sent the Level 2 provider a formal notification of the outcome of the Tribunal adjudication, which included an invoice for payment of the fine of £200,000 to be made within seven working days.

The Executive directed the Level 1 provider to pay withheld revenues of £33,924.58 to the PSA which was allocated to the administrative charge and part payment of the fine. Payment of £178,595.94 of the fine was not made within the time period specified (or at all) in breach of paragraph 4.8.6(b) of the Code.

During the Tribunal, the Executive were asked to confirm whether the Level 2 provider had complied with the other sanctions imposed by the Tribunal of 2 September 2016. The Executive stated that it had no evidence that the Level 2 provider had remedied the breach in accordance with the sanction, but by virtue of the PSA’s formal direction for suspension on 21 November 2016, the sanction had by default been remedied. In relation to the refund sanction, the Level 2 provider stated that it had refunded all consumers that had complained to the PSA. The PSA had not received any consumer complaints regarding refunds.

2. The Level 2 provider did not provide a response to the Warning Notice.
3. The Tribunal considered the Code and all the evidence before it. The Tribunal concluded that there had been a further breach of the Code due to non-payment of the fine sanction. 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

1. The Executive submitted that the following sanctions were appropriate:
 - 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 until the breach is remedied by payment of the

outstanding fine and original and instant administrative charges, whichever is the later.

based on a preliminary assessment of the breach as “very serious”. The Executive noted that although the Level 2 provider had initially corresponded with the Executive, it had quickly shown no real commitment to ensuring compliance with the sanctions including payment of the fine.

The Level 2 provider did not provide any representations on 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 pay the fine 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 breaches were **very serious**.

Final overall assessment

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

- The Level 2 provider had failed to respond to the Executive’s correspondence and it had shown a complete disregard for the process.

The Tribunal did not find any mitigating factors.

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 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 until the breach is remedied by payment of the outstanding fine and original and instant administrative charges, whichever is the later.

Administrative charge recommendation:

100%