

| Tribunal Sitting, Case Number and Date | Case Ref | Network Operator | Level 1 Provider | Level 2 Provider | Service Title and Type   | Case Type        | Procedure         |
|----------------------------------------|----------|------------------|------------------|------------------|--------------------------|------------------|-------------------|
| No. 114<br>Case 3<br>22/11/12          | 13317    | Relax Telecom    | N/A              | Horizon Housing  | Housing information line | Level 2 Provider | Track 2 procedure |

A service provided by the Level 2 provider, Horizon Housing, was the subject of a PhonepayPlus investigation and adjudication (case reference 07922) which resulted in sanctions being imposed by a Tribunal on 30 August 2012. The sanctions imposed by the Tribunal included a fine of £25,000 and general refunds to all consumers who claim a refund. In addition, an administrative charge of £4,674.90 was imposed. The deadline for payment of the fine and administrative charge was 22 September 2012.

The Level 2 provider was advised of the fine and the administrative charge by the Executive in an adjudication letter sent by email on 12 September 2012. The Level 2 provider was also directed to complete a form to assist in the payment of refunds.

The deadline for payment of the invoices and return of the form regarding refunds passed without receipt of payment and/or the return of the form in relation to refunds.

The Executive raised further breaches of the PhonepayPlus Code of Practice (12<sup>th</sup> Edition) (the “**Code**”) under the following provisions:

- Paragraph 4.8.4(b) - Failure to comply with a sanction
- Paragraph 4.10.2 - Non payment of an administrative charge

The Tribunal upheld the breaches. The Tribunal considered the breaches to be **very serious**. It issued a formal reprimand and a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate services for a period of five years (starting from the date of publication of this decision), or until the breaches are remedied by payment of the original fine and the original and instant administrative charges, whichever is the later.

Administrative Charge Awarded

100%

## **THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION**

**Thursday 22 November 2012**  
**TRIBUNAL SITTING No. 114/ CASE 3**  
**CASE REFERENCE: 13317**

Level 1 provider: N/A  
Level 2 provider: Horizon Housing (a Registered Charity)  
Type of service: Housing information line/ directory  
Network operator: Relax Telecom PLC

### **THIS CASE WAS BROUGHT AGAINST THE LEVEL 2 PROVIDER UNDER PARAGRAPH 4.4 OF THE CODE**

#### **BACKGROUND**

A service provided by the Level 2 provider, Horizon Housing, was the subject of a PhonepayPlus investigation and adjudication (case reference 07922) which resulted in sanctions being imposed by a Tribunal on 30 August 2012. The sanctions imposed by the Tribunal included a fine of £25,000 and general refunds to all consumers who claim a refund. In addition, an administrative charge of £4,674.90 was imposed. The deadline for payment of the fine and administrative charge was 22 September 2012.

The Level 2 provider was advised of the fine and the administrative charge by the Executive in an adjudication letter sent by email on 12 September 2012. The Level 2 provider was also directed to complete a form to assist in the payment of refunds.

The deadline for payment of the invoices and return of the form regarding refunds passed without receipt of payment and/or the return of the form in relation to refunds.

#### **The Investigation**

The Executive conducted this matter as a Track 2 procedure investigation in accordance with paragraph 4.4 of the PhonepayPlus Code of Practice (12<sup>th</sup> Edition) (the “**Code**”).

The Executive sent a breach letter to the Level 2 provider on 12 November 2012. Within the breach letter the Executive raised further breaches of the Code under the following provisions:

- Paragraph 4.8.4(b) – Failure to comply with a sanction
- Paragraph 4.10.2 – Non payment of an administrative charge

The Level 2 provider did not respond to the alleged breaches. On 22 November 2012, the Tribunal reached a decision on the breaches raised by the Executive.

#### **SUBMISSIONS AND CONCLUSIONS**

##### **ALLEGED BREACH ONE** **Paragraph 4.8.4(b)**

“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 noted that on 30 August 2012, the Tribunal adjudicated on a service that had been the subject of a PhonepayPlus investigation (case reference 07922) and had been operated and promoted by the Level 2 provider, Horizon Housing.

The adjudication resulted in the imposition of a fine of £25,000 and a requirement to refund all consumers who claim a refund. The Level 2 provider was advised of the fine, and sent an invoice, by the Executive on 12 September 2012. The deadline for payment of the fine was 9 September 2012. The Level 2 provider did not respond to the notification of the outcome of the adjudication or pay the fine. In addition, the Level 2 provider was directed to return a completed form to assist in the payment of refunds, but failed to do so. In light of the above, the Executive submitted that a further breach of the Code had occurred under paragraph 4.8.4(b).

2. The Level 2 provider failed to provide any response to the breach letter or settle the invoice.
3. The Tribunal considered the evidence and concluded on the basis of the Executive’s evidence that there had been a further breach of the Code. Accordingly, the Tribunal upheld a further breach of the Code under paragraph 4.8.4(b).

**Decision: UPHELD**

#### **ALLEGED BREACH TWO**

##### **Paragraph 4.10.2**

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

1. The Executive noted that on 30 August 2012, the Tribunal recommended that PhonepayPlus invoice the Level 2 provider 100% of the £4,674.90 administrative costs incurred as a result of the investigation and Tribunal proceedings. The Level 2 provider was advised of the administrative charge, and sent an invoice, by the Executive on 12 September 2012. The Level 2 provider did not respond to the notification of the outcome of the adjudication or the breach letter, or pay the administrative charge. In light of the above, the Executive submitted that a further breach of the Code had occurred under paragraph 4.10.2.
2. The Level 2 provider failed to provide any response or settle the invoice.
3. The Tribunal considered the evidence and concluded on the basis of the Executive’s evidence that there had been a breach of the Code. Accordingly, the Tribunal upheld a breach of the Code under paragraph 4.10.2.

**Decision: UPHELD**

#### **SANCTIONS**

#### **Initial Overall Assessment**

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

#### **Paragraph 4.8.4(b) – Failure to comply with a sanction**

The initial assessment of paragraph 4.8.4(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 incurred 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.

#### **Paragraph 4.10.2- Non payment of an administrative charge**

The initial assessment of paragraph 4.10.2 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 administrative charge 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**

There were no aggravating or mitigating factors.

The Tribunal concluded that the seriousness of the case should be regarded overall as **very serious**.

#### **Sanctions Imposed**

The Tribunal noted the comments made by the Tribunal of 30 August 2012 in relation to the Level 2 provider's connection to London and Southern Housing and the Tribunal's conclusion that the Level 2 provider had made a deliberate attempt to circumvent the Code and the protection it offers to consumers.

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

- A formal reprimand; and
- A prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate services for a period of five years (starting from the date of publication of this decision), or until the breaches are remedied by payment of the original fine and the original and instant administrative charges, whichever is the later.