



### Tribunal Meeting Number 146 / Case 2

**Case reference:** 38260  
**Level 2 provider:** Ametro Ltd (Dubai)  
**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 4.4 OF THE CODE**

#### **BACKGROUND**

A service provided by the Level 2 provider Ametro Ltd was the subject of a PhonepayPlus investigation and adjudication (case reference 13335), which resulted in sanctions being imposed by a Tribunal on 12 December 2013. The sanctions imposed by the Tribunal were a formal reprimand, a fine of £250,000, a requirement that access is barred to all the Level 2 provider's premium rate services for 12 months or until compliance advice has been implemented to the satisfaction of PhonepayPlus, whichever is the later and a requirement that refunds be paid to 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 PhonepayPlus that such refunds have been made. In addition, an administrative charge of £10,235.37 was imposed.

The Level 2 provider was notified of the fine and administrative charge by the Executive in an adjudication letter sent on 8 January 2014. The Level 2 provider failed to pay the fine and the administrative charge. The total amount outstanding to PhonepayPlus is £260,235.37. In addition, the Level 2 provider was sent a form to complete to assist in the administration of the refund sanction.

#### **The Investigation**

The Executive conducted this matter as a Track 2 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 19 February 2014. Within the breach letter the Executive raised the following breaches of the Code:

- 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 provide a response to the breach letter. On 20 March 2014, the Tribunal reached a decision on the breaches raised by the Executive.

#### **SUBMISSIONS AND CONCLUSIONS**

##### **ALLEGED BREACH 1**

###### **Paragraph 4.8.4(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 12 December 2013 the Tribunal adjudicated on a service operated by the Level 2 provider that had been the subject of a PhonepayPlus investigation (case reference 13335). The adjudication resulted in the imposition of sanctions, including a fine of £250,000 and a requirement that the Level 2 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 PhonepayPlus that such refunds have been made.

On 8 January 2014, the Executive sent the Level 2 provider a post adjudication letter which included an invoice for payment of the £250,000 to be made within seven working days. Payment was not made within the time period specified (or at all).

In addition, the Executive directed the Level 2 provider to complete a form to assist in the payment of refunds, which it was required to complete within 48 hours. The Executive did not receive the completed form or any other evidence demonstrating that the Level 2 provider had complied with the refund sanction.

Accordingly, the Executive submitted that the Level 2 provider had failed to pay the fine and comply with the refund sanction within the time period specified (or at all) in breach of the paragraph 4.8.4(b) of the Code.

2. The Level 2 provider did not provide a response to the breach letter.
3. The Tribunal considered the evidence. The Tribunal concluded there had been a further breach of the Code due to non-payment of the fine and failure to comply with the refund sanction. Accordingly, the Tribunal upheld a breach of paragraph 4.8.4(b) of the Code.

### **Decision: UPHELD**

### **ALLEGED BREACH 2**

#### **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. On 12 December 2013, the Tribunal recommended that PhonepayPlus impose 100% of the administrative costs incurred in relation to the Level 2 provider’s case (£10,235.37). On 8 January 2013, the Executive sent the Level 2 provider a post adjudication letter which included an invoice for the payment of the administrative charge. The invoice requested that payment be made within seven working days. The deadline for payment passed without PhonepayPlus receiving payment of the administrative charge.

In light of the above, the Executive submitted that a breach of paragraph 4.10.2 of the Code had occurred.

2. The Level 2 provider did not provide a response to the breach letter.
3. The Tribunal considered the evidence and concluded that on the basis of the Executive’s evidence that there had been a further breach of the Code as a result of the non-payment of the administrative charge. Accordingly, the Tribunal upheld a breach of paragraph 4.10.2 of the Code.

### **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 and failure to comply with the refund 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.

#### 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

In determining the final overall assessment for the case, the Tribunal took into account the following aggravating factor:

- The Level 2 provider failed to correspond and co-operate with the Executive throughout the whole investigation and enforcement process.

The Tribunal found no mitigating factors. 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; and
- a prohibition on the Level 2 provider from providing, or having any involvement in, any premium rate service for a period of three years (starting from the date of publication of this decision), or until payment of the outstanding fine and the original and instant administrative charges, whichever is the later.