

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS

TRIBUNAL DECISION

Thursday 18 May 2009 TRIBUNAL SITTING No. 27 / CASE 2

CASE REFERENCE: 784915/GL

Service provider & area:	Ambavox AG, Austria
Information provider & area:	Keyzone Company Limited, Cyprus.
Type of service:	Parcel delivery service
Service title:	N/A
Service number:	09066371319
Cost:	£1.50 per minute
Network operator:	Mobile Operators
Number of complainants:	15

THIS CASE WAS BROUGHT AGAINST THE SERVICE PROVIDER UNDER PARAGRAPH 8.5 OF THE CODE

BACKGROUND

In an adjudication of 18 December 2008, the Tribunal ordered that claims for refunds were to be paid by the Service Provider for the full amount spent by users, except where there was good cause to believe that such claims were not valid. The Service Provider was advised of the above sanction by the Executive in an adjudication letter sent by post and email on 13 January 2009.

In a series of email exchanges with the Executive on 19 January 2009 the Service Provider stated that it was the responsibility of the Network Operator and BT to deal with refund claims.

The Executive advised the Service Provider of its responsibilities under the PhonepayPlus Code of Practice (11th Edition, Amended April 2008) (the "Code") and warned of a potential breach of sanctions if the Service Provider failed to comply with the refund sanction imposed. The Service Provider submitted an application for review of the Tribunal's decision which the Executive subsequently forwarded to the Chairman of the Code Compliance Panel (CCP) in accordance with paragraph 8.10.3 of the Code. The application for review was subsequently rejected by the Chairman.

The Executive received a letter from a complainant dated 11 March 2009 advising that he had been unable to obtain a refund in respect of the refund sanction imposed on the Service Provider. Consequently, the Executive emailed the Service Provider and requested verification that it was complying with the imposed refund sanction.

In an email dated 16 March 2009 the Service Provider advised the Executive that the Service Provider had not refunded any claimants as it required proof beyond doubt that claimants were eligible to claim a refund.

The Service Provider also stated that it did not accept the sanction imposed by the Tribunal in the adjudication of 18 December 2008. The Executive provided advice in line with a PhonepayPlus Help Note for service providers on the processing of refunds and suggested that

the Service Provider simplified its refund process in order to make the process less onerous for complainants. In addition, the Executive warned that any refusal to simplify and facilitate the refund process may be considered as a failure to comply with the refund sanction imposed by the Tribunal on 18 December 2008 and would amount to a further breach of the Code under paragraph 8.9.3 of the Code.

In the absence of any response, the Executive sent a breach letter dated 1 April 2009 to the Service Provider alleging a further breach of the Code under paragraph 8.9.3. The Service Provider did not respond to the breach letter.

On 5 March 2009 a Tribunal upheld a further breach of the Code under paragraph 8.9.3b against the Service Provider for its failure to pay the £30,000 fine imposed by the Tribunal of 18 December 2008. The Tribunal subsequently imposed a bar on access to all of the Service Provider's premium rate numbers until such time as the breaches were remedied and payment of the fine and administrative charges were made in full.

The Tribunal made a decision on the further breach alleged by the Executive on 18 May 2009.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

FAILURE TO COMPLY WITH A SANCTION (Paragraph 8.9.3)

'The failure of any service provider to comply with any sanction within any reasonable time period imposed on it by PhoneyPayPlus will result in:

- a PhoneyPayPlus issuing a direction to all relevant network operators requiring suspension of access to some or all of the numbers allocated to the service provider until full compliance with PhoneyPayPlus sanctions has been achieved,*
- b a further breach of the Code by the service provider, which may result in additional sanctions being imposed.'*

1. The Executive submitted that despite the Tribunal's decision of 18 December 2008 that led to an order that claims for refunds were to be paid by the Service Provider for the full amount spent by users, except where there was good cause to believe that such claims were not valid, the Service Provider had failed to refund any complainants to date. The Executive made reference to correspondence from claimants stating that they have been unable to obtain a refund from the Service Provider.

The Executive submitted that it had contacted the Service Provider in order to verify that refunds had been processed in compliance with the imposed refund sanction and that, in response, the Service Provider had stated that no refunds had been given as no claimants had provided sufficient evidence as required by the Service Provider to 'prove beyond doubt' their claim. The Service Provider had stated in an email dated 16 March 2009 that it required the following evidence from a claimant:

- (1) that the claimant had been invoiced for calls made to the number in question
- (2) that the claimant had already paid for the calls made to the number in question
- (3) that the claimant had not already received compensation from his or her telephone provider.

The Service Provider had also stated that it did not accept the rulings of the Tribunal in relation to the imposed sanctions.

The Executive submitted that it had advised the Service Provider that (in accordance with a published PhonepayPlus Help Note) requests for the appropriate refund from the relevant claimants should not be unreasonably resisted and that the Executive expected service providers to act in good faith when handling such requests. The Executive had further advised that the Service Provider should not over-zealously require documentary evidence that payment for the service had been made by the claimant or was being demanded by the claimant's network operator. The Executive submitted that where there was doubt or disagreement, the burden of proof in such cases should be with the Service Provider to demonstrate that the charges were not made or that the claimant's case was not covered by the relevant ruling from the Tribunal.

The Executive submitted that it accepted that the Service Provider had a right to satisfy itself, in a remote transaction environment, that a refund request was valid and to protect itself against fraud or abuse. The Executive advised the Service Provider that it would be reasonable, if deemed necessary, to request a copy of the relevant phone bill with the itemised charges appearing from a claimant as a means of validation. The Executive noted that as a consequence any refund could be made payable to billpayers and sent to his or her address.

The Executive submitted that it had directed the Service Provider to take immediate steps to make the refund process less onerous for claimants. The Executive reminded the Service Provider that a refusal to simplify and facilitate the refund process could be considered a failure to comply with the refund sanction imposed by the Tribunal on 18 December 2008 and amount to a further breach of the Code under paragraph 8.9.3b. The Executive submitted that it had provided the Service Provider with an opportunity to simplify its refund criteria and make the process less onerous on complainants by accepting a copy of a claimant's relevant phone bill and by removing the additional layers of verification required to refund claimants. The Executive submitted that it had advised the Service Provider that the absence of a response would be considered by the Executive as confirmation of the Service Provider's refusal to simplify and facilitate the refund process.

2. The Service Provider stated that it would not provide a response to the Executive's breach of sanctions letter and that it had already stated in previous correspondence that it did not accept the Executive's ruling.
3. The Tribunal considered the evidence including the Service Provider's email of 16 March 2009 and concluded that the Service Provider had made the process of requesting refunds too onerous for consumers which had resulted in no refunds being made to claimants. The Tribunal concluded that as the Service Provider had failed to pay any refunds to consumers it had thereby failed to comply with the sanction imposed by the Tribunal on 18 December 2009. The Tribunal therefore decided to uphold a further breach of the Code in accordance with paragraph 8.9.3b of the Code.

Decision: UPHELD

SANCTIONS

The Tribunal did not find any aggravating or mitigating factors to consider.

The Tribunal therefore decided to impose the following sanctions:

- A Formal Reprimand;
- The Tribunal considered the bar which had been imposed by a previous Tribunal on 5 March 2009 for failure to comply with the fine sanction. That bar prevented access to all of the Service Provider's services and numbers until such time as the breaches were remedied and payment of the fine was made in full. The Tribunal decided to extend the bar to also require payment of all valid claims for refunds and full payment of all outstanding administrative charges.