

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 13 May 2010
TRIBUNAL SITTING No. 53/ CASE 2
CASE REFERENCE: 806717/JI

Service provider: H&T Communications Limited, Cardiff
Information provider: Bay Telecom Limited, Swansea

THIS CASE WAS BROUGHT AGAINST THE INFORMATION PROVIDER UNDER PARAGRAPH 8.7 OF THE CODE

BACKGROUND

The service was the subject of a PhonepayPlus investigation and adjudication on 29 October 2009 (case reference 806717), which resulted in sanctions being imposed on the Information Provider. One of the sanctions imposed by the Tribunal was a fine of £5,000.

The Information Provider was advised of the above sanction by PhonepayPlus in an adjudication letter sent by post and email on 11 November 2009. Invoices 9494 and 9495 in respect of the fine and administrative charges associated with the cost of the investigation were sent to the Information Provider on the same date. The Information Provider failed to make payment in respect of the invoices, resulting in the sanctions being reverted to the Service Provider, who subsequently made full payment of the invoices.

The case was brought back to Tribunal on 1 April 2010 in respect of alleged breaches in relation to non-compliance with a sanction and non-payment of invoiced costs. One of the sanctions imposed by the Tribunal on 1 April 2010 was a fine of £1,000.

The Information Provider was advised of the above sanction by PhonepayPlus in an adjudication letter sent by post and email on 14 April 2010. Invoices 9783 and 9784 in respect of the fine and administrative charges associated with the cost of the investigation were sent to Bay Telecom on the same date. The Information Provider failed to make payment in respect of the invoices.

The Executive believed that this contravened the PhonepayPlus Code of Practice (11th Edition Amended April 2008) ('the Code') and amounted to further breaches of the Code by virtue of the following Code provisions:

- Paragraph 8.9.3b (in respect of non-payment of fine imposed under paragraph 8.9.2d)
- Paragraph 8.12 (in respect of non-payment of an invoiced administrative charge)

The Investigation

The Executive conducted this matter as a Standard Procedure investigation in accordance with paragraph 8.5 of the Code.

The Information Provider contacted the Executive by telephone on 16 April 2010 to request advice in relation to proposing a payment plan to settle the charges in instalments.

As the deadline for payment of invoices 9783 and 9784 was 24 April 2010, and neither payment nor a proposal payment plan had been received by that date, the Executive sent an email to the Information Provider dated 26 April 2010, advising that the deadline was extended until the following day. The Information Provider responded on the same date, stating that a payment proposal request had been sent dated 20 April 2010.

The Executive sent a further email to the Information Provider on the same date, asking that the request be re-sent, and a further email the following day, stating that no request had been received. The Executive also contacted Bay Telecom by telephone on 27 April 2010. The Information Provider submitted a payment proposal on 27 April 2010, which was rejected by PhonepayPlus.

The Executive subsequently sent a breach letter to the Information Provider on 27 April 2010 and received a response to the breaches raised by the Executive dated 5 May 2010.

The Tribunal made a decision on the breaches raised by the Executive on 13 May 2010.

SUBMISSIONS AND CONCLUSIONS

ALLEGED BREACH ONE

FAILURE TO COMPLY WITH SANCTION (Paragraph 8.9.3b)

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

b a further breach of the Code by the service provider, which may result in additional sanctions being imposed.”

1. The Executive submitted that Bay Telecom failed to make payment of Invoice 9783 in respect of a fine of £1,000 imposed on it by the Tribunal of 1 April 2010. It submitted that the Information Provider had failed to comply with the sanction and that it followed that a further breach had occurred under paragraph 8.9.3b of the Code.
2. The Information Provider stated that a formal offer of payment had been made and it appeared that it was unacceptable. It stated that the Tribunal of 1 April 2010 had been advised of financial difficulties and the likelihood that any fine imposed would need a payment plan to be agreed.
3. The Tribunal considered the evidence and concluded that, as the Information Provider had not paid Invoice 9783 in respect of the £1,000 fine imposed on it by the Tribunal of 1 April 2010, it had amounted to a further breach under paragraph 8.9.3b of the Code. The Tribunal upheld a further breach of the Code.

Decision: UPHELD

ALLEGED BREACH TWO

NON-PAYMENT OF ADMINISTRATIVE CHARGE (Paragraph 8.12)

“All service providers found to be in breach of the Code may be invoiced for the administrative and legal costs of the work undertaken by PhonepayPlus. Non-payment within the period laid down by PhonepayPlus will also be a breach of the Code and may result in further sanctions being imposed. PhonepayPlus may direct that the relevant network operator withholds and passes to PhonepayPlus the sum(s) due from the payments outstanding under the contract between the network operator and the service provider.”

1. The Executive submitted that Bay Telecom had failed to make payment of Invoice 9784 in respect of an administrative charge of £2,350.00 (including VAT) issued to it. It submitted that the Information Provider had failed to pay an administrative charge and that a further breach had occurred under paragraph 8.12 of the Code.
2. The Information Provider stated that a payment plan had been offered in respect of this due payment. It stated that the Tribunal of 1 April 2010 had been advised of financial difficulties and the likelihood that any fine imposed would need a payment plan to be agreed.
3. The Tribunal considered the evidence and concluded that the Information Provider had failed to pay an administrative charge imposed on it by the Tribunal of 1 April 2010 and that this amounted to a further breach under paragraph 8.12 of the Code. The Tribunal upheld a further breach of the Code.

Decision: UPHELD

SANCTIONS

The Tribunal took the view that the case should be regarded overall as **significant**.

There were no specific aggravating or mitigating factors for the Tribunal to consider.

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

- The Tribunal ordered that the bar already in existence to be extended to run from two years from the date from which all outstanding fines and administrative charges are paid and discharged;
- No further fine was imposed on the Information Provider, but the Tribunal stated that, if all previously outstanding fines and administrative charges are not discharged by 28 February 2011, the Information Provider will then be required by PhonepayPlus to also pay any administrative charge of this adjudication. If all previously outstanding fines and administrative charges are discharged by 28 February 2011, the Tribunal recommended that no further administrative charge be levied in relation to this adjudication.