

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday 1 April 2010
TRIBUNAL SITTING No. 50/ CASE 1
CASE REFERENCE: 806717/JI

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

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

BACKGROUND

This service was the subject of a PhonepayPlus investigation and adjudication on 29 October 2009 (case reference 806717) that resulted in sanctions being imposed on the Information Provider known as Bay Telecom. The Service Provider and Information Provider had provided signed undertaking forms on 10 July 2009. One of the sanctions imposed by the Tribunal was a fine of £5,000.

Bay Telecom was advised of the above sanction by PhonepayPlus in an adjudication letter sent by post and sent electronically on 11 November 2009. This correspondence included invoices 9494 and 9495 in respect of the fine and administrative charges associated with the cost of the investigation.

Bay Telecom failed to make payment in respect of the invoices, resulting in the fine sanction being reverted to the Service Provider in accordance with the undertaking it provided under paragraph 8.3.4b of the Code. The Service Provider subsequently made full payment of the invoices. The Executive considered that the Information Provider's failure to pay the fine and administrative charge 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 8.7 of the Code.

The Executive issued a breach letter to the Information Provider dated 18 January 2010. The Executive received no response to the breaches raised in the letter.

The Tribunal made a decision on the breaches raised by the Executive on 1 April 2010, having heard an Informal Representations from the Information Provider.

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 9494 in respect of a fine of £5,000 imposed on it by the Tribunal of 29 October 2009). 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 did not respond to the alleged breach raised by the Executive.

During the Informal Representation, the Information Provider stated that it had been unaware that the ‘070’ numbers it had supplied were to be used in a non-compliant service. It stated that it had not had the money to pay the fine, that it had subsequently made an arrangement with the Service Provider to pay the £5,000 on its behalf and that it was to pay back the sum to the Service Provider in installments.

3. The Tribunal considered the evidence, including the comments made by the Information Provider during the Informal Representation. It concluded that, as the Information Provider had not paid Invoice 9494 in respect of the £5,000 fine imposed on it by the Tribunal of 29 October 2009, 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 9495 in respect of an administrative charge of £3,596.05 (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 did not respond to the alleged breach raised by the Executive.
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 29 October 2009 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 non-compliance with any sanction imposed by a Tribunal is potentially **very serious** and could incur a maximum fine, although the circumstances of the individual case should be taken into account when deciding on which sanctions are appropriate.

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:

- A Formal Reprimand;
- A fine of £1,000;
- The Tribunal imposed a bar on the Information Provider from operating any premium rate service for two years from the date of this decision.

The Tribunal commented that it expected the Information Provider to promptly pay the administrative charges in relation to this case.