

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday, 15 September 2010 TRIBUNAL SITTING No. 62/ CASE 1
CASE REFERENCE: 846264

Service provider: Colgant Data Service Limited, Ireland

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

BACKGROUND

This service was the subject of a PhonepayPlus investigation and adjudication (case reference 835983) which resulted in sanctions being imposed on the Service Provider, Colgant Data Services Limited, on 26 July 2010. One of the sanctions imposed by the Tribunal was a fine of £8,000.

The Service Provider was advised of the above sanction by PhonepayPlus in an adjudication letter sent by post and sent electronically on 6 August 2010. This correspondence included invoices in respect of the fine and administrative charges associated with the cost of the investigation. The Executive did not receive payment of the fine or the administrative charge.

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 Tribunal made a decision on the breaches raised by the Executive on 15 September 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 the Service Provider had failed to make payment of Invoice 10010 in respect of the fine of £8,000 imposed on it by the Tribunal of 26 July

2010. It submitted that, as the Service Provider had failed to pay the fine, a further breach of the Code had occurred by virtue of paragraph 8.9.3b.

2. The Service Provider did not provide a formal response to the Executive's alleged breaches. However, it sent an email to the Executive in which it stated that it did not have the funds to pay the fine and that the business would 'fold' if it were required to pay. It also stated that, should the business improve in the future, it would then pay the fine in order to be removed from the list of barred service providers (due to non-payment of a fine).
3. The Tribunal considered the evidence and concluded that the Service Provider had not paid Invoice 10010 in respect of the £8,000 fine imposed on it by the Tribunal of 26 July 2010 and that this 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 the Service Provider had failed to make payment of Invoice 10013 in respect of an administrative charge of £2,386 (incl. VAT) issued to it. It submitted that, as the Service Provider had failed to pay the administrative charge, a further breach of the Code appears to have occurred by virtue of paragraph 8.12 of the Code.
2. The Service Provider did not provide a formal response to the Executive's alleged breaches. However, it sent an email to the Executive in which it stated that it did not have the funds to pay the fine and that the business would 'fold' if it were required to pay. It also stated that, should the business improve in the future, it would then pay the fine in order to be removed from the list of barred service providers (due to non-payment of a fine).
3. The Tribunal considered the evidence and concluded that the Service Provider had failed to pay the administrative charge imposed on it by the Tribunal of 26 July 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 failure to comply with a sanction imposed by PhonepayPlus should be regarded overall as **very serious**.

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;
- The Tribunal ordered that the Service Provider be prohibited from involvement in, or contracting for, the provision of any premium rate service in the UK for a period of six months from the date of this decision and thereafter for so long as the outstanding fine and the administrative charges remain unpaid.