

THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS TRIBUNAL DECISION

Thursday, 2 September 2010 TRIBUNAL SITTING No. 61/ CASE 6
CASE REFERENCE: 835326

Information provider: Phonenumbers4u Limited, Kent
Service provider: Mr Daniel Hill trading as 'Blue Track', Sunderland

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 (case reference 835326) that resulted in sanctions being imposed on the Information Provider known as Mr Daniel Hill trading as 'Blue Track' on 8 July 2010. One of the sanctions imposed by the Tribunal was a fine of £45,000.

'Blue Track' was advised of the above sanction by PhonepayPlus in an adjudication letter sent by post and sent electronically on 21 July 2010. This correspondence included invoices 9965 and 9967 in respect of the fine and administrative charges associated with the cost of the investigation. The Service Provider made part-payment of the fine sanction, a sum of £10,700 (representing the sum it had withheld from the Information Provider). The Executive did not receive payment of the outstanding fine amount of £34,295.63 or the administrative charge.

The Executive raised the following breaches of the PhonepayPlus Code of Practice 11th Edition Amended April 2008 ('the Code'):

- 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 2 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 Mr Daniel Hill trading as 'Blue Track' failed to make payment of Invoice 9965 in respect of the fine of £45,000 imposed on it by the Tribunal of 8 July 2010. It submitted that, as the Information Provider had clearly failed to the fine, a further breach of the Code had occurred by virtue of paragraph 8.9.3b.
2. The Information Provider did not respond to the Executive's allegations.
3. The Tribunal considered the evidence and concluded that, by not paying the fine imposed on it, the Information Provider had not paid Invoice 9965 in respect of the £45,000 fine imposed on it by the Tribunal of 8 July 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 Mr Daniel Hill, trading as 'Blue Track', had failed to make payment of Invoice 9967 in respect of an administrative charge of £3,507.48 issued to it. It submitted that, as the Information 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 Information Provider did not respond to the Executive's allegations.
3. The Tribunal considered the evidence and concluded that the Information Provider had failed to pay the administrative charge imposed on it by the Tribunal of 8 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 the case should be regarded overall as **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 imposed a bar on the Information Provider from all premium rate services until such date as the outstanding fine and administrative charge in relation to the original case and the new administrative charge in relation to this case are paid

by the Information Provider or, if paid in full or in part by the Service Provider, until such time as the whole amount outstanding has been paid and the Service Provider confirms to the Executive that it has been reimbursed for such sums it has paid by the Information Provider.